

103D CONGRESS
1ST SESSION

S. 1600

To amend the Social Security Act to establish long-term care assistance programs for the elderly, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 28 (legislative day, OCTOBER 13), 1993

Mr. PACKWOOD (for himself, Mr. DOLE, Mr. SIMPSON, and Mr. DURENBERGER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Social Security Act to establish long-term care assistance programs for the elderly, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Secure Choice Act of
5 1993”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—LONG-TERM CARE PROVISIONS

Sec. 200. Amendment of 1986 Code.

Sec. 201. Qualified long-term care services treated as medical care.
Sec. 202. Treatment of long-term care insurance or plans.
Sec. 203. Effective dates.

Sec. 211. Policy requirements.

Sec. 212. Additional requirements for issuers of long-term care insurance policies.

Sec. 213. Coordination with State requirements.

Sec. 214. Uniform language and definitions.

Sec. 215. Effective dates.

(a) IN GENERAL.—The Social Security Act (42 U.S.C. 301 et seq.) is amended by adding at the end the following new title:

“Sec. 2101. Appropriation.
“Sec. 2102. State plans for long-term care assistance.

- “Sec. 2103. Payment to States.
- “Sec. 2104. Operation of State plans.
- “Sec. 2105. Observance of religious beliefs.
- “Sec. 2106. Indian health service providers.
- “Sec. 2107. Assignment of rights of payment.
- “Sec. 2108. Hospital providers of nursing facility services.
- “Sec. 2109. Withholding of Federal share of payments for certain medicare and medicaid providers.
- “Sec. 2110. Provisions respecting inapplicability of certain requirements.
- “Sec. 2111. Use of deductible, cost sharing, and similar charges.
- “Sec. 2112. Transfers of assets, trusts, liens, and adjustments and recoveries.
- “Sec. 2113. Application of provisions of title II relating to subpoenas.
- “Sec. 2114. Treatment of income and resources for certain impaired spouses.
- “Sec. 2115. Definitions.

“PART B—SECURE CHOICE INSURANCE OPTION

- “Sec. 2131. Purpose.
- “Sec. 2132. Definitions.
- “Sec. 2133. Establishment of program.
- “Sec. 2134. Requirements on qualified long-term care insurance policies.
- “Sec. 2135. Benefits under qualified long-term care insurance policies.
- “Sec. 2136. Premiums under qualified long-term care insurance policies.
- “Sec. 2137. Portability requirements.
- “Sec. 2138. Payments to qualified providers; benefit subsidies.
- “Sec. 2139. Federal contribution.
- “Sec. 2140. Resource rules.
- “Sec. 2141. Standards and performance organizations.
- “Sec. 2142. Educational program.

1 “PART A—GRANTS TO STATES FOR LONG-TERM CARE

2 ASSISTANCE PROGRAMS

3 “APPROPRIATION

4 “SEC. 2101. (a) IN GENERAL.—For the purpose of
5 enabling each State to—

6 “(1) furnish long-term care assistance to any
7 functionally impaired individual, severely function-
8 ally impaired individual, or functionally impaired
9 child under this part; and

10 “(2) establish a Secure Choice Insurance Pro-
11 gram under part B;

1 there is hereby authorized to be appropriated and is ap-
 2 propriated for each fiscal year a sum sufficient to carry
 3 out the purposes of this title.

4 “(b) LIMITATION ON FEDERAL EXPENDITURES FOR
 5 LONG-TERM CARE ASSISTANCE.—

6 “(1) IN GENERAL.—The total amount of pay-
 7 ments made by the Federal Government under this
 8 part for a fiscal year shall not exceed the sum of the
 9 allotments for all States determined under para-
 10 graph (2).

11 “(2) STATE ALLOTMENTS.—The Secretary shall
 12 determine an allotment for each State for each fiscal
 13 year equal to the sum of the State’s allotments for
 14 all applicable age groups determined under para-
 15 graph (3).

16 “(3) STATE ALLOTMENTS BY APPLICABLE AGE
 17 GROUP.—The Secretary shall determine a State al-
 18 lotment for each applicable age group in accordance
 19 with the following formula:

$$\text{State allotment for applicable age group} = \left[\text{applicable actual percentage} \left(\begin{array}{c} \text{adjusted} \\ \text{actual} \\ \text{per capita} \\ \text{amount} \\ \text{for the} \\ \text{age group} \end{array} \right) + \text{applicable median percentage} \left(\begin{array}{c} \text{adjusted} \\ \text{median} \\ \text{per capita} \\ \text{amount} \\ \text{for the} \\ \text{age group} \end{array} \right) \right] \times \begin{array}{c} \text{number of} \\ \text{countable} \\ \text{individuals} \\ \text{in the age} \\ \text{group} \end{array}$$

20 “(4) DEFINITIONS.—For purposes of this sub-
 21 section:

1 “(A) APPLICABLE AGE GROUP.—The term
2 ‘applicable age group’ means any of the follow-
3 ing age groups:

4 “(i) Individuals who have not attained
5 65 years of age.

6 “(ii) Individuals who have attained at
7 least 65 years of age but have not attained
8 75 years of age.

9 “(iii) Individuals who have attained at
10 least 75 years of age but have not attained
11 85 years of age.

12 “(iv) Individuals who have attained at
13 least 85 years of age.

14 “(B) APPLICABLE ACTUAL PERCENT-
15 AGE.—The term ‘applicable actual percentage’
16 means—

17 “(i) for fiscal year 1995, 90 percent;
18 and

19 “(ii) for each succeeding fiscal year,
20 the percentage determined under this sub-
21 paragraph for the preceding fiscal year re-
22 duced by 10 percent, but not less than 0
23 percent.

1 “(C) APPLICABLE MEDIAN PERCENT-
2 AGE.—The term ‘applicable median percentage’
3 means—

4 “(i) for fiscal year 1995, 10 percent;
5 and

6 “(ii) for each succeeding fiscal year,
7 the percentage determined under this sub-
8 paragraph for the preceding fiscal year in-
9 creased by 10 percent, but not greater
10 than 100 percent.

11 “(D) ADJUSTED ACTUAL PER CAPITA
12 AMOUNT.—

13 “(i) IN GENERAL.—The term ‘ad-
14 justed actual per capita amount’ for an ap-
15 plicable age group means—

16 “(I) for fiscal year 1995, an
17 amount equal to the unadjusted ac-
18 tual per capita amount (as determined
19 under clause (ii)) for the age group
20 updated by the inflation percentage
21 (as determined under clause (iii)); and

22 “(II) for fiscal year 1996 and
23 succeeding fiscal years, an amount
24 equal to the amount determined under
25 this subparagraph for the age group

1 for the previous fiscal year updated by
2 the inflation percentage.

3 “(ii) UNADJUSTED ACTUAL PER CAP-
4 ITA AMOUNT.—

5 “(I) IN GENERAL.—The
6 unadjusted actual per capita amount
7 determined under this clause for an
8 applicable age group is an amount
9 equal to the quotient of—

10 “(aa) the total Federal pay-
11 ment made to the State under
12 section 1903 for long-term care
13 services (as defined in subclause
14 (II)) furnished to individuals in
15 the applicable age group for fis-
16 cal year 1994, divided by

17 “(bb) the total number of
18 individuals in such applicable age
19 group who had incomes below the
20 income official poverty line (as
21 defined in section 2115(f)) dur-
22 ing fiscal year 1994.

23 “(II) LONG-TERM CARE SERV-
24 ICES.—For purposes of subclause (I),

1 the term ‘long-term care services’
2 means—

3 “(aa) nursing facility serv-
4 ices (as defined in section
5 1905(f));

6 “(bb) home or community-
7 based services furnished under a
8 waiver under subsection (c) or
9 (d) of section 1915;

10 “(cc) home and community
11 care furnished under section
12 1929;

13 “(dd) home health care serv-
14 ices (as referred to in section
15 1905(a)(7));

16 “(ee) personal care services
17 (as described in section
18 1905(a)(24)); and

19 “(ff) private duty nursing
20 services (as referred to in section
21 1905(a)(8)).

22 “(iii) INFLATION PERCENTAGE.—The
23 inflation percentage determined under this
24 clause is equal to—

1 “(I) the percentage change in the
2 long-term care inflation index (as de-
3 fined in subparagraph (G)) for the fis-
4 cal year; or

5 “(II) if the long-term care infla-
6 tion index has not been developed, 5
7 percent.

8 “(E) ADJUSTED MEDIAN PER CAPITA
9 AMOUNT.—

10 “(i) IN GENERAL.—The term ‘ad-
11 justed median per capita amount’ for an
12 applicable age group means—

13 “(I) for fiscal year 1995, an
14 amount equal to the unadjusted me-
15 dian per capita amount (as deter-
16 mined under clause (ii)) for the age
17 group updated by the inflation per-
18 centage (as determined under sub-
19 paragraph (D)(iii)); and

20 “(II) for fiscal year 1996 and
21 succeeding fiscal years, an amount
22 equal to the amount determined under
23 this subparagraph for the age group
24 for the previous fiscal year updated by
25 the inflation percentage.

1 “(ii) UNADJUSTED MEDIAN PER CAP-
2 ITA AMOUNT.—The unadjusted median per
3 capita amount determined under this
4 clause for an applicable age group is an
5 amount equal to the median of the
6 unadjusted actual per capita amounts (de-
7 termined under subparagraph (D)(ii)) for
8 all States for such age group.

9 “(F) COUNTABLE INDIVIDUALS.—The
10 term ‘number of countable individuals’ for an
11 applicable age group means the number of indi-
12 viduals in the State who are in the age group
13 who have incomes below the income official pov-
14 erty line during the fiscal year.

15 “(G) LONG-TERM CARE INFLATION
16 INDEX.—The term ‘long-term care inflation
17 index’ means an inflation index developed by
18 the Secretary which is based on the growth in
19 the average annual total wages of individuals—

20 “(i) who are employed by nursing fa-
21 cilities or home health agencies, and

22 “(ii) who are nurses, personal care at-
23 tendants, or other individuals providing
24 long-term care services under this part.

1 “(c) LIMITATION ON STATE OBLIGATION TO MAKE
2 EXPENDITURES.—A State shall not be obligated to make
3 expenditures under this part in excess of the amount of
4 expenditures necessary for such State to receive payments
5 from the Federal Government under this part equal to the
6 amount of such State’s allotment determined under sub-
7 section (b)(2).

8 “STATE PLANS FOR LONG-TERM CARE ASSISTANCE

9 “SEC. 2102. (a) STATE PLAN REQUIREMENTS.—A
10 State plan for long-term care assistance must meet the
11 following requirements:

12 “(1) ADMINISTRATION OF THE STATE PLAN.—

13 The State plan must—

14 “(A) provide for the establishment or des-
15 ignation of a single State agency to administer
16 or to supervise the administration of the plan;

17 “(B) provide that the plan shall be in ef-
18 fect in all political subdivisions of the State;

19 “(C) provide—

20 “(i) such methods of administration
21 as are found by the Secretary to be nec-
22 essary for the proper and efficient oper-
23 ation of the plan; and

24 “(ii) that each State or local officer or
25 employee who is responsible for the ex-
26 penditure of substantial amounts of funds

1 under the State plan, each individual who
2 formerly was such an officer or employee
3 and each partner of such an officer or em-
4 ployee shall be prohibited from committing
5 any act, in relation to any activity under
6 the plan, the commission of which, in con-
7 nection with any activity concerning the
8 Federal Government, by an officer or em-
9 ployee of the Federal Government, an indi-
10 vidual who was such an officer or em-
11 ployee, or a partner of such an officer or
12 employee is prohibited by section 207 or
13 208 of title 18, United States Code;

14 “(D) provide for financial participation by
15 the State equal to not less than 40 percent of
16 the non-Federal share of the expenditures
17 under the plan with respect to which payments
18 under section 2103 are authorized by this part
19 and provide for financial participation by the
20 State equal to all of such non-Federal share or
21 provide for distribution of funds from Federal
22 or State sources, for carrying out the State
23 plan, on an equalization or other basis which
24 will assure that the lack of adequate funds from
25 local sources will not result in lowering the

1 amount, duration, scope, or quality of care and
2 services available under the plan;

3 “(E) provide that all individuals wishing to
4 make application for long-term care assistance
5 under the plan shall have opportunity to do so,
6 and that such assistance shall be furnished with
7 reasonable promptness to all eligible individuals;

8 “(F) provide for granting an opportunity
9 for a fair hearing before the State agency to
10 any individual whose claim for long-term care
11 assistance under the plan is denied or is not
12 acted upon with reasonable promptness;

13 “(G) provide that the State will have in ef-
14 fect an appropriate appeals process for deter-
15 minations under the comprehensive functional
16 assessment (as defined in section 2115(b)) and
17 the individual community care plan (as defined
18 in section 2115(g)) established for such individ-
19 uals; and

20 “(H) provide that the State health agency,
21 or other appropriate State agency (whichever is
22 utilized by the Secretary for the purpose speci-
23 fied in the first sentence of section 1864(a)),
24 shall be responsible for establishing and main-
25 taining standards for private or public entities

1 from which recipients of long-term care assist-
2 ance under the plan may receive care or serv-
3 ices.

4 “(2) INDIVIDUALS ELIGIBLE FOR ASSIST-
5 ANCE.—The State plan must provide—

6 “(A)(i) for making long-term care assist-
7 ance available, including at least the care and
8 services described in subparagraphs (A) and (C)
9 of section 2115(h)(1), to functionally impaired
10 individuals described in section 2115(d)(1) who
11 meet the income and resource eligibility require-
12 ments of paragraphs (1) and (2) of subsection
13 (f);

14 “(ii) for making long-term care assistance
15 available, including at least the care and serv-
16 ices described in subparagraphs (A), (B), and
17 (C) of section 2115(h)(1), to severely function-
18 ally impaired individuals described in section
19 2115(d)(2) who meet the income and resource
20 eligibility requirements of paragraphs (1) and
21 (2) subsection (f); or

22 “(iii) for making long-term care assistance
23 available, including at least the care and serv-
24 ices described in subparagraphs (A), (B), and
25 (C) of section 2115(h)(1), to functionally im-

1 paired children described in section 2115(d)(3)
2 who meet the income and resource eligibility re-
3 quirements of paragraphs (1) and (2) sub-
4 section (f);

5 “(B) that the long-term care assistance
6 made available to any individual described in
7 subparagraph (A) shall not be less in amount,
8 duration, or scope than the long-term care as-
9 sistance made available to any other such indi-
10 vidual; and

11 “(C) for inclusion, to the extent required
12 by regulations prescribed by the Secretary, of
13 provisions conforming to such regulations with
14 respect to the furnishing of long-term care as-
15 sistance under the plan to individuals who are
16 residents of the State but are absent from the
17 State.

18 “(3) STANDARDS FOR ELIGIBILITY.—

19 “(A) IN GENERAL.—The State plan must
20 provide for reasonable standards which shall be
21 comparable for all individuals for determining
22 eligibility for and the extent of long-term care
23 assistance under the plan which—

24 “(i) are consistent with the objectives
25 of this part;

1 “(ii) provide for taking into account
2 only such income and resources as are, as
3 determined in accordance with standards
4 prescribed by the Secretary, available to
5 the applicant or recipient;

6 “(iii) provide for reasonable evaluation
7 of any such income or resources;

8 “(iv) do not take into account the fi-
9 nancial responsibility of any individual for
10 any applicant or recipient of assistance
11 under the plan unless such applicant or re-
12 cipient is such individual’s spouse or such
13 individual’s child who is under age 21; and

14 “(v) at the option of the State provide
15 for flexibility in the application of such
16 standards with respect to income by taking
17 into account, except to the extent pre-
18 scribed by the Secretary, necessary expend-
19 itures incurred by an individual for medical
20 care that are not reimbursable by any
21 other payor.

22 “(B) INFORMATION REGARDING INCOME
23 AND ELIGIBILITY VERIFICATION.—The State
24 plan must provide that information is requested
25 and exchanged for purposes of income and eligi-

1 bility verification in accordance with a State
2 system which meets the requirements of section
3 1137.

4 “(C) POST-ELIGIBILITY APPLICATION OF
5 INCOME TO COST OF CARE AND PERSONAL
6 NEEDS ALLOWANCES.—The State plan must
7 comply with the provisions of subsection (g)
8 with respect to the application of an individual’s
9 income to the cost of care and personal needs
10 allowances.

11 “(D) TRANSFER OF ASSETS, TRUSTS,
12 LIENS, AND ADJUSTMENTS AND RECOVERIES.—
13 The State plan must comply with the provisions
14 of section 2112 with respect to transfers of as-
15 sets, trusts, liens, and adjustments and recover-
16 ies.

17 “(E) COMMUNITY SPOUSES.—The State
18 plan must meet the requirements of section
19 2114 with respect to protection of community
20 spouses.

21 “(4) QUALITY OF CARE FURNISHED UNDER
22 THE PLAN.—

23 “(A) BEST INTERESTS OF RECIPIENTS.—
24 The State plan must provide such safeguards as
25 may be necessary to assure that eligibility for

1 care and services under the plan will be deter-
2 mined, and such care and services will be pro-
3 vided, in a manner consistent with simplicity of
4 administration and the best interests of the re-
5 cipients.

6 “(B) EVALUATIONS OF INDIVIDUALS RE-
7 CEIVING CARE.—The State plan must provide
8 that in each case for which payment is made for
9 services under the State plan—

10 “(i) the individual who receives such
11 services has received a comprehensive func-
12 tional assessment under which a qualified
13 community care case manager, in consulta-
14 tion with an individual’s primary medical
15 care provider, determines that the individ-
16 ual is a functionally impaired individual, a
17 severely functionally impaired individual,
18 or a functionally impaired child; and

19 “(ii) in the case of payment for home
20 and community based services, such serv-
21 ices were furnished under a written plan of
22 care established and periodically reviewed
23 and evaluated by a qualified community
24 care case manager.

1 “(C) COMMUNITY CARE CASE MAN-
2 AGERS.—The State plan must provide that any
3 contract with a qualified community care case
4 manager to provide case management services
5 shall include a provision under which such case
6 manager agrees not to provide long-term care
7 services to any individual for whom the case
8 manager provides case management services.

9 “(D) APPROPRIATENESS AND QUALITY OF
10 CARE.—The State plan must provide—

11 “(i) that the State health agency, or
12 other appropriate State agency, shall be re-
13 sponsible for establishing a plan, consistent
14 with regulations prescribed by the Sec-
15 retary, for the review by appropriate pro-
16 fessional personnel of the appropriateness
17 and quality of care and services furnished
18 to recipients of long-term care assistance
19 under the plan in order to provide guid-
20 ance with respect thereto in the adminis-
21 tration of the plan to the State agency;
22 and

23 “(ii) that, except as provided in sec-
24 tion 1919(g), the State or local agency uti-
25 lized by the Secretary for the purpose spec-

1 ified in the first sentence of section
2 1864(a), or, if such agency is not the State
3 agency which is responsible for licensing
4 institutions, the State agency responsible
5 for such licensing, will perform for the
6 State agency administering or supervising
7 the administration of the plan approved
8 under this part the function of determining
9 whether institutions and other long-term
10 care providers meet the requirements for
11 participation under such plan, except that,
12 if the Secretary has cause to question the
13 adequacy of such determinations, the Sec-
14 retary is authorized to validate State deter-
15 minations and, on that basis, make inde-
16 pendent and binding determinations con-
17 cerning the extent to which individual in-
18 stitutions and agencies meet the require-
19 ments for participation.

20 “(E) DESCRIPTIONS OF METHODS USED
21 TO ASSURE QUALITY.—The State plan must in-
22 clude descriptions of—

23 “(i) the kinds and numbers of profes-
24 sional personnel and supporting staff that
25 will be used in the administration of the

1 plan and of the responsibilities they will
2 have;

3 “(ii) the standards, for private or pub-
4 lic entities from which recipients of long-
5 term care assistance under the plan may
6 receive care or services, that will be utilized
7 by the State authority or authorities re-
8 sponsible for establishing and maintaining
9 such standards;

10 “(iii) the cooperative arrangements
11 with State health agencies entered into
12 with a view to appropriate utilization of
13 and maximum coordination of the provi-
14 sion of long-term care assistance with the
15 services administered or supervised by such
16 agencies; and

17 “(iv) other standards and methods
18 that the State will use to assure that care
19 and services provided to recipients of long-
20 term care assistance are of high quality.

21 “(5) NURSING FACILITIES.—The State plan
22 must provide—

23 “(A) that any nursing facility receiving
24 payments under such plan must satisfy all the

1 requirements of subsections (b) through (d) of
2 section 1919 as they apply to such facilities;

3 “(B) for including in ‘nursing facility serv-
4 ices’ at least the items and services specified (or
5 deemed to be specified) by the Secretary under
6 section 1919(f)(7) and making available upon
7 request a description of the items and services
8 so included;

9 “(C) for procedures to make available to
10 the public the data and methodology used in es-
11 tablishing payment rates for nursing facilities
12 under this part; and

13 “(D) for compliance (by the date specified
14 in the respective sections) with the require-
15 ments of—

16 “(i) section 1919(e) (relating to State
17 requirements for nursing facilities);

18 “(ii) section 1919(g) (relating to re-
19 sponsibility for survey and certification of
20 nursing facilities); and

21 “(iii) sections 1919(h)(2)(B) and
22 1919(h)(2)(D) (relating to establishment
23 and application of remedies).

24 “(6) FREEDOM OF CHOICE OF PROVIDER.—Ex-
25 cept as provided in section 2110 and except in the

1 case of Puerto Rico, the Virgin Islands, and Guam,
2 the State plan must provide that any individual eli-
3 gible for long-term care assistance may obtain such
4 assistance from any institution, agency, or person,
5 qualified to perform the services required, who un-
6 dertakes to provide the individual with such services.

7 “(7) AGREEMENTS WITH PROVIDERS AND PAY-
8 MENT FOR SERVICES.—

9 “(A) AGREEMENTS.—The State plan must
10 provide for agreements with every person or in-
11 stitution providing services under the State plan
12 under which such person or institution agrees—

13 “(i) to keep such records as are nec-
14 essary fully to disclose the extent of the
15 services provided to individuals receiving
16 long-term care assistance under the State
17 plan; and

18 “(ii) to furnish the State agency or
19 the Secretary with such information, re-
20 garding any payments claimed by such
21 person or institution for providing services
22 under the State plan, as the State agency
23 or the Secretary may from time to time re-
24 quest.

1 “(B) DEDUCTIBLE, COST SHARING, AND
2 SIMILAR CHARGES.—The State plan must pro-
3 vide that deductible, cost sharing, and similar
4 charges may be imposed only as provided in
5 section 2111.

6 “(C) PAYMENTS UNDER THE PLAN.—

7 “(i) PAYMENTS TO NURSING FACILI-
8 TIES.—The State plan must provide for
9 payment (except where the State agency is
10 subject to an adjustment under section
11 2109) for nursing facility services provided
12 under the plan through the use of rates
13 (determined in accordance with methods
14 and standards developed by the State)
15 which take into account the costs (includ-
16 ing the costs of services required to attain
17 or maintain the physical, mental, and
18 psychosocial well-being of each resident eli-
19 gible for benefits under this part) of com-
20 plying with subsections (b) (other than
21 paragraph (3)(F) thereof), (c), and (d) of
22 section 1919 and provide (in the case of a
23 nursing facility with a waiver under section
24 1919(b)(4)(C)(ii)) for an appropriate re-
25 duction to take into account the lower

1 costs (if any) of the facility for nursing
2 care and which the State finds, and makes
3 assurances satisfactory to the Secretary,
4 are reasonable and adequate to meet the
5 costs which must be incurred by efficiently
6 and economically operated facilities in
7 order to provide care and services in con-
8 formity with applicable Federal and State
9 laws, regulations, and quality and safety
10 standards and to assure that individuals
11 eligible for long-term care assistance have
12 reasonable access (taking into account geo-
13 graphic location and reasonable travel
14 time) to nursing facility services of ade-
15 quate quality.

16 “(ii) VALUATION OF CAPITAL AS-
17 SETS.—The State plan shall provide assur-
18 ances satisfactory to the Secretary that the
19 valuation of capital assets, for purposes of
20 determining payment rates for nursing fa-
21 cilities will not be increased (as measured
22 from the date of acquisition by the seller to
23 the date of the change of ownership), solely
24 as a result of a change of ownership, by
25 more than the lesser of—

1 “(I) one-half of the percentage
2 increase (as measured over the same
3 period of time, or, if necessary, as ex-
4 trapolated retrospectively by the Sec-
5 retary) in the Dodge Construction
6 Systems Costs for Nursing Homes,
7 applied in the aggregate with respect
8 to those facilities which have under-
9 gone a change of ownership during
10 the fiscal year; or

11 “(II) one-half of the percentage
12 increase (as measured over the same
13 period of time) in the Consumer Price
14 Index for All Urban Consumers (Unit-
15 ed States city average).

16 “(iii) PAYMENT FOR HOME AND COM-
17 MUNITY BASED SERVICES.—The State plan
18 shall provide for payment for home and
19 community based services through rates es-
20 tablished by the State in conformance with
21 applicable Federal and State laws, regula-
22 tions, and quality and safety standards.

23 “(D) CLAIMS PAYMENT PROCEDURES.—
24 The State plan must provide for claims pay-
25 ment procedures which—

1 “(i) ensure that 90 percent of claims
2 for payment (for which no further written
3 information or substantiation is required in
4 order to make payment) made for services
5 covered under the plan are paid within 30
6 days after the date of receipt of such
7 claims and that 99 percent of such claims
8 are paid within 60 days after the date of
9 receipt of such claims; and

10 “(ii) provide for procedures of prepay-
11 ment and postpayment claims review, in-
12 cluding review of appropriate data with re-
13 spect to the recipient and provider of a
14 service and the nature of the service for
15 which payment is claimed, to ensure the
16 proper and efficient payment of claims and
17 management of the program.

18 “(E) CONSULTATIVE SERVICES.—The
19 State plan must provide for consultative serv-
20 ices by health agencies and other appropriate
21 agencies of the State to nursing facilities and
22 such other long-term care providers as the Sec-
23 retary may specify in order to assist them—

24 “(i) to qualify for payments under
25 this part;

1 “(ii) to establish and maintain such
2 fiscal records as may be necessary for the
3 proper and efficient administration of this
4 part; and

5 “(iii) to provide information needed to
6 determine payments due under this part on
7 account of care and services furnished to
8 individuals.

9 “(F) METHODS AND PROCEDURES RELAT-
10 ING TO UTILIZATION AND PAYMENT.—The
11 State plan must provide such methods and pro-
12 cedures relating to the utilization of, and the
13 payment for, care and services available under
14 the plan as may be necessary to safeguard
15 against unnecessary utilization of such care and
16 services and to assure that payments are con-
17 sistent with efficiency, economy, and quality of
18 care and are sufficient to enlist enough provid-
19 ers so that care and services are available under
20 the plan at least to the extent that such care
21 and services are available to the general popu-
22 lation in the geographic area.

23 “(G) DISCLOSING ENTITIES.—The State
24 plan must provide that any disclosing entity (as
25 defined in section 1124(a)(2)) receiving pay-

1 ments under such plan complies with the re-
2 quirements of section 1124.

3 “(H) EXCLUSION OF CERTAIN INDIVID-
4 UALS OR ENTITIES.—The State plan must pro-
5 vide that the State agency shall exclude any
6 specified individual or entity from participation
7 under the State plan for the period specified by
8 the Secretary, when required by the Secretary
9 to do so pursuant to section 1128 or 1128A or
10 title XVIII, and provide that no payment may
11 be made under the plan with respect to any
12 item or service furnished by such individual or
13 entity during such period.

14 “(I) AUDITING OF RECORDS.—The State
15 plan must provide that the records of any entity
16 participating in the plan and providing services
17 reimbursable on a cost-related basis will be au-
18 dited as the Secretary determines to be nec-
19 essary to ensure that proper payments are
20 made under the plan.

21 “(8) THIRD PARTY LIABILITY.—The State plan
22 must provide—

23 “(A) that the State or local agency admin-
24 istering such plan will take all reasonable meas-
25 ures to ascertain the legal liability of third par-

1 ties (including entities providing for health or
2 long-term care insurance) to pay for care and
3 services available under the plan, including—

4 “(i) the collection of sufficient infor-
5 mation (as specified by the Secretary in
6 regulations) to enable the State to pursue
7 claims against such third parties, with
8 such information being collected at the
9 time of any determination or redetermina-
10 tion of eligibility for long-term care assist-
11 ance; and

12 “(ii) the submission to the Secretary
13 of a plan (subject to approval by the Sec-
14 retary) for pursuing claims against such
15 third parties, which plan shall—

16 “(I) be integrated with, and be
17 monitored as a part of the Secretary’s
18 review of, the State’s mechanized
19 claims processing and information re-
20 trieval system under section 2103(h),
21 and

22 “(II) be subject to the provisions
23 of section 2103(h)(4) relating to re-
24 ductions in Federal payments for fail-
25 ure to meet conditions of approval;

1 “(B) that in any case where such a legal
2 liability is found to exist after long-term care
3 assistance has been made available on behalf of
4 the individual and where the amount of reim-
5 bursement the State can reasonably expect to
6 recover exceeds the costs of such recovery, the
7 State or local agency will seek reimbursement
8 for such assistance to the extent of such legal
9 liability;

10 “(C) that in the case of an individual who
11 is entitled to long-term care assistance under
12 the State plan with respect to a service for
13 which a third party is liable for payment, the
14 person furnishing the service may not seek to
15 collect from the individual (or any financially
16 responsible relative or representative of that in-
17 dividual) payment of an amount for that serv-
18 ice—

19 “(i) if the total of the amount of the
20 liabilities of third parties for that service is
21 at least equal to the amount payable for
22 that service under the plan (disregarding
23 section 2111); or

24 “(ii) in an amount which exceeds the
25 lesser of (I) the amount which may be col-

1 lected under section 2111, or (II) the
2 amount by which the amount payable for
3 that service under the plan (disregarding
4 section 2111) exceeds the total of the
5 amount of the liabilities of third parties for
6 that service; and

7 “(D) that a person who furnishes services
8 and is participating under the plan may not
9 refuse to furnish services to an individual (who
10 is entitled to have payment made under the
11 plan for the services the person furnishes) be-
12 cause of a third party’s potential liability for
13 payment for the service.

14 “(9) ASSIGNMENT.—The State plan must pro-
15 vide for mandatory assignment of rights of payment
16 for long-term care services owed to recipients, in ac-
17 cordance with section 2107.

18 “(10) INFORMATION REQUIREMENTS.—

19 “(A) REQUIREMENTS ON STATE.—The
20 State plan must provide—

21 “(i) that the State agency will make
22 such reports, in such form and containing
23 such information, as the Secretary may
24 from time to time require, and comply with
25 such provisions as the Secretary may from

1 time to time find necessary to assure the
2 correctness and verification of such re-
3 ports;

4 “(ii) safeguards which restrict the use
5 or disclosure of information concerning ap-
6 plicants and recipients to purposes directly
7 connected with the administration of the
8 plan;

9 “(iii) that within 90 days following
10 the completion of each survey of any facil-
11 ity or other provider of long-term care
12 services by the appropriate State agency,
13 such agency shall (in accordance with reg-
14 ulations of the Secretary) make public in
15 readily available form and place the perti-
16 nent findings of each such survey relating
17 to the compliance of each such facility or
18 other provider with (I) the statutory condi-
19 tions of participation imposed under this
20 part, and (II) the major additional condi-
21 tions which the Secretary finds necessary
22 in the interest of health and safety of indi-
23 viduals who are furnished care or services
24 by any such facility or other provider;

1 “(iv) that whenever a provider of serv-
2 ices or any other person is terminated, sus-
3 pended, or otherwise sanctioned or prohib-
4 ited from participating under the State
5 plan, the State agency shall promptly no-
6 tify the Secretary of such action;

7 “(v) a method of making information
8 evidencing eligibility for long-term care as-
9 sistance available to an eligible individual
10 who does not reside in a permanent dwell-
11 ing or does not have a fixed home or mail-
12 ing address; and

13 “(vi) that the State will provide infor-
14 mation and access to certain information
15 respecting sanctions taken against practi-
16 tioners and providers by State licensing
17 authorities in accordance with section
18 1921.

19 “(B) REQUIREMENTS ON PROVIDERS.—

20 The State plan must—

21 “(i) require that an entity (other than
22 an individual practitioner or a group of
23 practitioners) that furnishes, or arranges
24 for the furnishing of, services under the
25 plan, shall supply (within such period as

1 may be specified in regulations by the Sec-
2 retary or by the single State agency which
3 administers or supervises the administra-
4 tion of the plan) upon request specifically
5 addressed to such entity by the Secretary
6 or such State agency, the information de-
7 scribed in section 1128(b)(9);

8 “(ii) require each facility or other pro-
9 vider of long-term care services which re-
10 ceives payments under the plan and of a
11 type for which a uniform reporting system
12 has been established under section 1121(a)
13 to make reports to the Secretary of infor-
14 mation described in such section in accord-
15 ance with the uniform reporting system for
16 that type of facility or provider; and

17 “(iii) provide for filing of uniform cost
18 reports by each nursing facility and peri-
19 odic audits by the State of such reports.

20 “(b) CONDITIONS OF APPROVAL OF PLAN.—The Sec-
21 retary shall approve any plan which fulfills the conditions
22 specified in subsection (a), except that the Secretary shall
23 not approve any plan which imposes, as a condition of eli-
24 gibility for long-term care assistance under the plan—

1 “(1) any residence requirement which excludes
2 any individual who resides in the State, regardless of
3 whether or not the residence is maintained perma-
4 nently or at a fixed address; or

5 “(2) any citizenship requirement which excludes
6 any citizen of the United States.

7 “(c) SANCTION.—In addition to any other sanction
8 available to a State, a State may provide for a reduction
9 of any payment amount otherwise due with respect to a
10 person who furnishes services under the plan in an amount
11 equal to up to 3 times the amount of any payment sought
12 to be collected by that person in violation of subsection
13 (a)(8)(C).

14 “(d) LIMITED WAIVER OF REQUIREMENTS.—Not-
15 withstanding any other requirement of this part, the Sec-
16 retary may waive or modify any requirement of this part
17 with respect to the long-term care assistance program in
18 American Samoa and the Northern Mariana Islands, other
19 than—

20 “(1) a waiver of the Federal long-term care as-
21 sistance percentage;

22 “(2) the limitation in section 1108(c), or

23 “(3) the requirement that payment may be
24 made for long-term care assistance only with respect
25 to amounts expended by American Samoa or the

1 Northern Mariana Islands for care and services de-
 2 scribed in subparagraphs (A) through (D) of section
 3 2115(h)(1).

4 “(e) WAIVER RELATING TO CLAIMS PROCEDURE.—
 5 The requirement of subsection (a)(7)(D) with respect to
 6 a State plan may be waived by the Secretary if the Sec-
 7 retary finds that the State has exercised good faith in try-
 8 ing to meet such requirement.

9 “(f) INCOME AND RESOURCE REQUIREMENTS FOR
 10 ELIGIBILITY DETERMINATIONS.—

11 “(1) INCOME REQUIREMENT.—An individual
 12 meets the income requirement of this subsection if—

13 “(A) the amount of the individual’s month-
 14 ly income, less

15 “(B) the amount of the individual’s in-
 16 curred costs for long-term care services for the
 17 month that are not reimbursed by a third
 18 party,

19 does not exceed 100 percent of the income official
 20 poverty line (as defined in section 2115(f)).

21 “(2) RESOURCE REQUIREMENT.—An individual
 22 meets the resource requirement of this subsection if
 23 the individual’s resources do not exceed—

24 “(A) \$2,000 for individuals receiving long-
 25 term care assistance in a nursing facility; and

1 “(B) \$5,000 for individuals receiving long-
2 term care assistance in a setting other than a
3 nursing facility.

4 “(3) ROUNDING.—The total amount of the in-
5 come limitation determined under paragraph (1)
6 shall, if it is not a multiple of \$100 or such other
7 amount as the Secretary may prescribe, be rounded
8 to the next higher multiple of \$100 or such other
9 amount, as the case may be.

10 “(4) DEFINITIONS.—Except as otherwise pro-
11 vided, for purposes of this part, the term ‘income’
12 has the meaning given such term in section 1612
13 and the term ‘resources’ has the meaning given such
14 term in section 1613.

15 “(g) POST-ELIGIBILITY APPLICATION OF INCOME TO
16 COST OF CARE AND PERSONAL NEEDS ALLOWANCES.—

17 “(1) IN GENERAL.—Each individual receiving
18 long-term care assistance under this part shall con-
19 tribute an amount equal to the amount determined
20 under paragraph (2) to the cost of the long-term
21 care services furnished to such individual under this
22 part.

23 “(2) AMOUNT OF CONTRIBUTION.—

24 “(A) IN GENERAL.—With respect to an in-
25 dividual, the amount determined under this

1 paragraph is an amount equal to such individ-
2 ual's post-eligibility monthly income (as defined
3 in paragraph (3)) less the applicable personal
4 needs allowance determined under subpara-
5 graph (B).

6 “(B) APPLICABLE PERSONAL NEEDS AL-
7 LOWANCE.—

8 “(i) INSTITUTIONALIZED INDIVID-
9 UALS.—In the case of an institutionalized
10 individual, the applicable personal needs al-
11 lowance is an amount—

12 “(I) which is reasonable in
13 amount for personal needs of the indi-
14 vidual while in an institution, and

15 “(II) which is not less (and may
16 be greater) than \$50 per month.

17 “(ii) INDIVIDUALS RECEIVING HOME
18 AND COMMUNITY BASED SERVICES.—In
19 the case of an individual receiving home
20 and community based services, the applica-
21 ble personal needs allowance is an amount
22 determined appropriate by the State, in-
23 cluding amounts necessary to pay for food,
24 shelter, and utilities.

1 “(iii) DEFINITION.—For purposes of
2 this subparagraph, the term ‘institutional-
3 ized individual’ means an individual—

4 “(I) who is an inpatient in a
5 nursing facility for which payments
6 are made under this part throughout
7 a month, and

8 “(II) who is determined to be eli-
9 gible for long-term care assistance
10 under the State plan.

11 “(3) POST-ELIGIBILITY MONTHLY INCOME.—
12 For purposes of this subsection, the term ‘post-eli-
13 gibility monthly income’ means—

14 “(A) in the case of an individual whose
15 monthly income is equal to or less than 100
16 percent of the income official poverty line, an
17 amount equal to such individual’s monthly in-
18 come; and

19 “(B) in the case of an individual whose
20 monthly income exceeds 100 percent of the in-
21 come official poverty line, an amount equal to
22 100 percent of the income official poverty line.

23 “PAYMENT TO STATES

24 “SEC. 2103. (a) IN GENERAL.—Except as otherwise
25 provided in this section, the Secretary shall pay to each

1 State which has a plan approved under this part, for each
2 quarter—

3 “(1) an amount equal to the Federal long-term
4 care assistance percentage (as defined in section
5 2115(c)) of the total amount expended during such
6 quarter as long-term care assistance under the State
7 plan;

8 “(2)(A) an amount equal to 75 percent of so
9 much of the sums expended during such quarter (as
10 found necessary by the Secretary for the proper and
11 efficient administration of the State plan) as are at-
12 tributable to compensation or training of skilled pro-
13 fessional personnel, and staff directly supporting
14 such personnel, of the State agency or any other
15 public agency;

16 “(B) notwithstanding paragraph (1) or sub-
17 paragraph (A), with respect to amounts expended
18 during such quarter under this part for nursing aide
19 training and competency evaluation programs de-
20 scribed in section 1919(e)(1) (including the costs for
21 nurse aides to complete such competency evaluation
22 programs), regardless of whether the programs are
23 provided in or outside nursing facilities or of the
24 skill of the personnel involved in such programs, an
25 amount equal to 50 percent of so much of the sums

1 expended during such quarter under this part (as
2 found necessary by the Secretary for the proper and
3 efficient administration of the State plan) as are at-
4 tributable to such programs;

5 “(C) an amount equal to 75 percent of so much
6 of the sums expended during such quarter under
7 this part (as found necessary by the Secretary for
8 the proper and efficient administration of the State
9 plan) as are attributable to preadmission screening
10 and resident review activities conducted by the State
11 under section 1919(e)(7); and

12 “(D) an amount equal to 75 percent of so much
13 of the sums expended during such quarter under
14 this part (as found necessary by the Secretary for
15 the proper and efficient administration of the State
16 plan) as are attributable to State activities under
17 section 1919(g);

18 “(3) an amount equal to—

19 “(A) 90 percent of so much of the sums
20 expended during such quarter as are attrib-
21 utable to the design, development, or installa-
22 tion of such mechanized claims processing and
23 information retrieval systems as the Secretary
24 determines are likely to provide more efficient,
25 economical and effective administration of the

1 State plan and to be compatible with the claims
2 processing and information retrieval systems
3 utilized in the administration of title XVIII, in-
4 cluding the State's share of the cost of install-
5 ing such a system to be used jointly in the ad-
6 ministration of such State's plan and the plan
7 of any other State approved under this part,

8 “(B) 75 percent of so much of the sums
9 expended during such quarter as are attrib-
10 utable to the operation of systems (whether
11 such systems are operated directly by the State
12 or by another person under a contract with the
13 State) of the type described in subparagraph
14 (A) (whether or not designed, developed, or in-
15 stalled with assistance under such subpara-
16 graph) which are approved by the Secretary
17 and which include provision for prompt written
18 notice to each individual who is furnished serv-
19 ices covered by the State plan of the specific
20 services (other than confidential services) so
21 covered, the name of the person or persons fur-
22 nishing the services, the date or dates on which
23 the services were furnished, and the amount of
24 the payment or payments made under the plan
25 on account of the services, and

1 “(C) 75 percent of the sums expended with
2 respect to costs incurred during such quarter
3 (as found necessary by the Secretary for the
4 proper and efficient administration of the State
5 plan) as are attributable to the performance of
6 utilization review or quality review;

7 “(4) an amount equal to 100 percent of the
8 sums expended during such quarter under this part
9 which are attributable to the costs of the implemen-
10 tation and operation of the immigration status ver-
11 ification system described in section 1137(d);

12 “(5) subject to subsection (b) an amount equal
13 to—

14 “(A) 90 percent of the sums expended dur-
15 ing such a quarter within the 12-quarter period
16 beginning with the first quarter in which a pay-
17 ment is made to the State pursuant to this
18 paragraph, and

19 “(B) 75 percent of the sums expended dur-
20 ing each succeeding calendar quarter,
21 with respect to costs incurred during such quarter
22 (as found necessary by the Secretary for the elimi-
23 nation of fraud in the provision and administration
24 of long-term care assistance provided under the
25 State plan) which are attributable to the establish-

1 ment and operation of (including the training of per-
2 sonnel employed by) a State long-term care fraud
3 control unit (as defined in section 2115(m)); and

4 “(6) subject to section 1919(g)(3)(B), an
5 amount equal to 50 percent of the remainder of the
6 amounts expended during such quarter as found
7 necessary by the Secretary for the proper and effi-
8 cient administration of the State plan.

9 “(b) LIMIT ON THE AMOUNT OF PAYMENT.—The
10 amount of funds which the Secretary is otherwise obli-
11 gated to pay a State during a quarter under subsection
12 (a)(5) may not exceed one-quarter of 1 percent of the
13 sums expended by the Federal, State, and local govern-
14 ments during the previous quarter in carrying out the
15 State’s plan under this part.

16 “(c) ESTIMATE OF QUARTERLY PAYMENT TO
17 STATE.—

18 “(1) IN GENERAL.—Prior to the beginning of
19 each quarter, the Secretary shall estimate the
20 amount to which a State will be entitled under sub-
21 section (a) for such quarter. Such estimates shall be
22 based on—

23 “(A) a report filed by the State containing
24 its estimate of the total sum to be expended in
25 such quarter in accordance with the provisions

1 of such subsections, and stating the amount ap-
2 propriated or made available by the State and
3 its political subdivisions for such expenditures
4 in such quarter, and if such amount is less than
5 the State's proportionate share of the total sum
6 of such estimated expenditures, the source or
7 sources from which the difference is expected to
8 be derived, and

9 “(B) such other investigation as the Sec-
10 retary may find necessary.

11 “(2) PAYMENTS.—

12 “(A) IN GENERAL.—The Secretary shall
13 pay to the State, in such installments as the
14 Secretary may determine, the amount estimated
15 under paragraph (1), reduced or increased to
16 the extent of any overpayment or underpayment
17 which the Secretary determines was made
18 under this section to such State for any prior
19 quarter and with respect to which adjustment
20 has not already been made under this sub-
21 section.

22 “(B) THIRD PARTY REIMBURSEMENTS.—
23 Expenditures for which payments were made to
24 the State under subsection (a) shall be treated
25 as an overpayment to the extent that the State

1 or local agency administering such plan has
2 been reimbursed for such expenditures by a
3 third party pursuant to the provisions of its
4 plan in compliance with section 2102(a)(8).

5 “(C) OVERPAYMENT BY A STATE.—

6 “(i) IN GENERAL.—For purposes of
7 this subsection, when an overpayment by a
8 State to a person or other entity is discov-
9 ered, the State shall have a period of 60
10 days in which to recover or attempt to re-
11 cover such overpayment before adjustment
12 is made in the Federal payment to such
13 State on account of such overpayment. Ex-
14 cept as otherwise provided in clause (ii),
15 the adjustment in the Federal payment
16 shall be made at the end of the 60 days,
17 whether or not recovery was made.

18 “(ii) SPECIAL RULE.—In any case
19 where the State is unable to recover an
20 overpayment (or any portion of such over-
21 payment) made to a person or other entity
22 on account of such overpayment having
23 been a debt discharged in bankruptcy or
24 otherwise being uncollectible, no adjust-
25 ment shall be made in the Federal pay-

1 ment to such State on account of such
2 overpayment (or portion of such overpay-
3 ment).

4 “(iii) AMOUNTS RECOVERED.—The
5 pro rata share to which the United States
6 is equitably entitled, as determined by the
7 Secretary, of the net amount recovered
8 during any quarter by the State or any po-
9 litical subdivision of the State with respect
10 to long-term care assistance furnished
11 under the State plan shall be considered an
12 overpayment to be adjusted under this sub-
13 section.

14 “(3) APPROPRIATIONS DEEMED OBLIGATED.—
15 Upon the making of any estimate by the Secretary
16 under this subsection, any appropriations available
17 for payments under this section shall be deemed ob-
18 ligated.

19 “(4) OVERPAYMENTS TO STATES.—In any case
20 in which the Secretary estimates that there has been
21 an overpayment under this section to a State on the
22 basis of a claim by such State that has been dis-
23 allowed by the Secretary under section 1116(d), and
24 such State disputes such disallowance, the amount
25 of the Federal payment in controversy shall, at the

1 option of the State, be retained by such State or re-
2 covered by the Secretary pending a final determina-
3 tion with respect to such payment amount. If such
4 final determination is to the effect that any amount
5 was properly disallowed, and the State chose to re-
6 tain payment of the amount in controversy, the Sec-
7 retary shall offset, from any subsequent payments
8 made to such State under this part, an amount
9 equal to the proper amount of the disallowance plus
10 interest on such amount disallowed for the period
11 beginning on the dates such amount was disallowed
12 and ending on the date of such final determination
13 at the rate (determined by the Secretary) based on
14 the average of the bond equivalent of the weekly 90-
15 day Treasury bill auction rates during such period.

16 “(d) PROHIBITIONS ON PAYMENT.—Payment under
17 the preceding provisions of this section shall not be
18 made—

19 “(1) with respect to any amount expended for
20 long-term care assistance—

21 “(A) for nursing facility services to reim-
22 burse (or otherwise compensate) a nursing facil-
23 ity for payment of a civil money penalty im-
24 posed under this part or title XI, or

1 “(B) for home and community based serv-
2 ices to reimburse (or otherwise compensate) a
3 provider of such services for payment of a civil
4 money penalty imposed under this part or title
5 XI; and

6 “(2) with respect to any amount expended to
7 reimburse (or otherwise compensate) any provider of
8 long-term care services under this part for payment
9 of legal expenses associated with any action initiated
10 by the facility that is dismissed on the basis that no
11 reasonable legal ground existed for the institution of
12 such action.

13 “(e) ADJUSTMENT OF PAYMENTS.—Notwithstanding
14 the preceding provisions of this section, the amount deter-
15 mined under subsection (a)(1) for any State for any quar-
16 ter shall be adjusted in accordance with section 2109.

17 “(f) PROHIBITION ON PAYMENT IN CASES OF EX-
18 CLUSION CONTRACTS.—Notwithstanding the preceding
19 provisions of this section, no payment shall be made to
20 a State under the preceding provisions of this section for
21 expenditures for long-term care assistance provided for an
22 individual under the State’s plan approved under this part
23 to the extent that a private insurer (as defined by the Sec-
24 retary by regulation) would have been obligated to provide
25 such assistance but for a provision of its insurance con-

1 tract which has the effect of limiting or excluding such
2 obligation because the individual is eligible for or is pro-
3 vided long-term care assistance under the plan.

4 “(g) PAYMENT FOR COLLECTION OF SUPPORT OR
5 PAYMENT UNDER COOPERATIVE ARRANGEMENT.—

6 “(1) IN GENERAL.—When a political subdivi-
7 sion of a State makes, for the State of which it is
8 a political subdivision, or one State makes, for an-
9 other State, the enforcement and collection of rights
10 of support or payment assigned under section 2107,
11 pursuant to a cooperative arrangement under such
12 section (either within or outside of such State), there
13 shall be paid to such political subdivision or such
14 other State from amounts which would otherwise
15 represent the Federal share of payments for long-
16 term care assistance provided to the eligible individ-
17 uals on whose behalf such enforcement and collec-
18 tion was made, an amount equal to 15 percent of
19 any amount collected which is attributable to such
20 rights of support or payment.

21 “(2) ALLOCATION WHERE MULTIPLE JURISDIC-
22 TIONS INVOLVED.—Where more than one jurisdic-
23 tion is involved in an enforcement or collection under
24 paragraph (1), the amount of the incentive payment
25 determined under such paragraph shall be allocated

1 among the jurisdictions in a manner to be prescribed
2 by the Secretary.

3 “(h) MECHANIZED CLAIMS PROCESSING AND RE-
4 TRIEVAL SYSTEMS.—

5 “(1) IN GENERAL.—In order to receive pay-
6 ments under paragraph (3)(B) of subsection (a)
7 without being subject to percent reductions set forth
8 in paragraph (4)(B) of this subsection, a State must
9 provide that mechanized claims processing and infor-
10 mation retrieval systems of the type described in
11 subsection (a)(3)(A) and detailed in an advance
12 planning document approved by the Secretary are
13 operational on or before September 30, 1995.

14 “(2) APPROVAL OF SYSTEMS.—

15 “(A) IN GENERAL.—In order to receive
16 payments under paragraph (3)(B) of subsection
17 (a) without being subject to the percent reduc-
18 tions set forth in paragraph (4)(B) of this sub-
19 section, a State must have its mechanized
20 claims processing and information retrieval sys-
21 tems, of the type required to be operational
22 under paragraph (1), initially approved by the
23 Secretary in accordance with paragraph (5)(A).

24 “(B) DEADLINE.—The deadline for ap-
25 proval of such systems for a State is the last

1 day of the fourth quarter that begins after the
2 date on which the Secretary determines that
3 such systems became operational as required
4 under paragraph (1).

5 “(C) DEEMED APPROVAL.—Any State’s
6 systems which are approved by the Secretary
7 for purposes of subsection (a)(3)(A) on or be-
8 fore the date of the enactment of this sub-
9 section shall be deemed to be initially approved
10 for purposes of this subsection.

11 “(3) FEDERAL MATCH.—When a State’s sys-
12 tems are approved, the 75 percent Federal matching
13 provided in subsection (a)(3)(B) shall become effec-
14 tive with respect to such systems, retroactive to the
15 first quarter beginning after the date on which such
16 systems became operational as required under para-
17 graph (1).

18 “(4) REVIEW OF SYSTEMS.—

19 “(A) IN GENERAL.—The Secretary shall
20 review all approved systems not less often than
21 once every 3 years, and shall reapprove or dis-
22 approve any such systems. Systems which fail
23 to meet the current performance standards, sys-
24 tem requirements, and any other conditions for
25 approval developed by the Secretary under

1 paragraph (6) shall be disapproved. Any State
2 having systems which are so disapproved shall
3 be subject to a percent reduction under sub-
4 paragraph (B). The Secretary shall make the
5 determination of reapproval or disapproval and
6 so notify the States not later than the end of
7 the first quarter following the review period.
8 Reviews may, at the Secretary's discretion, con-
9 stitute reviews of the entire system or only
10 those standards, systems requirements, and
11 other conditions which have demonstrated
12 weakness in previous reviews.

13 “(B) DISAPPROVAL OF SYSTEM.—If the
14 Secretary disapproves a State's systems under
15 subparagraph (A), the Secretary shall, with re-
16 spect to such State, for quarters beginning
17 after the determination of disapproval and be-
18 fore the first quarter beginning after such sys-
19 tems are reapproved, reduce the percent speci-
20 fied in subsection (a)(3)(B) to a percent of not
21 less than 50 percent and not more than 70 per-
22 cent as the Secretary determines to be appro-
23 priate and commensurate with the nature of
24 noncompliance by such State, except that such
25 percent may not be reduced by more than 10

1 percentage points in any 4-quarter period by
2 reason of this subparagraph. No State shall be
3 subject to a percent reduction under this para-
4 graph before the fifth quarter beginning after
5 such State's systems were initially approved.

6 “(C) WAIVER.—The Secretary may retro-
7 actively waive a percent reduction imposed
8 under subparagraph (B), if the Secretary deter-
9 mines that the State's systems meet all current
10 performance standards and other requirements
11 for reapproval and that such action would im-
12 prove the administration of the State's plan
13 under this part, except that no such waiver may
14 extend beyond the 4 quarters immediately prior
15 to the quarter in which the State's systems are
16 reapproved.

17 “(5) REQUIREMENTS FOR INITIAL APPROVAL.—

18 “(A) IN GENERAL.—In order to be initially
19 approved by the Secretary, mechanized claims
20 processing and information retrieval systems
21 must be of the type described in subsection
22 (a)(3)(A) and must meet the following require-
23 ments:

24 “(i) The systems must be capable of
25 developing provider and patient profiles

1 which are sufficient to provide specific in-
2 formation as to the use of covered types of
3 services and items.

4 “(ii) The State must provide that in-
5 formation on probable fraud or abuse
6 which is obtained from, or developed by,
7 the systems, is made available to the
8 State’s long-term care fraud control unit
9 (if any).

10 “(iii) The systems must meet all per-
11 formance standards and other require-
12 ments for initial approval developed by the
13 Secretary under paragraph (6).

14 “(B) REAPPROVAL.—In order to be
15 reapproved by the Secretary, mechanized claims
16 processing and information retrieval systems
17 must meet the requirements of clauses (i) and
18 (ii) of subparagraph (A) and performance
19 standards and other requirements for
20 reapproval developed by the Secretary under
21 paragraph (6).

22 “(6) DEVELOPMENT OF PERFORMANCE STAND-
23 ARDS.—The Secretary, with respect to State sys-
24 tems, shall—

1 “(A) develop performance standards, sys-
2 tem requirements, and other conditions for ap-
3 proval for use in initially approving such State
4 systems, and shall further develop written ap-
5 proval procedures for conducting reviews for
6 initial approval, including specific criteria for
7 assessing systems in operation to ensure that
8 all such performance standards and other re-
9 quirements are met;

10 “(B) develop an initial set of performance
11 standards, system requirements, and other con-
12 ditions for reapproval for use in reapproving or
13 disapproving State systems, and shall further
14 develop written reapproval procedures for con-
15 ducting reviews for reapproval, including spe-
16 cific criteria for reassessing systems operations
17 over a period of at least 6 months during each
18 fiscal year to ensure that all such performance
19 standards and other requirements are met on a
20 continuous basis;

21 “(C) provide that reviews for reapproval
22 shall be for the purpose of developing a systems
23 performance data base and assisting States to
24 improve their systems, and that no percent re-

1 duction shall be made under paragraph (4) on
2 the basis of such a review;

3 “(D) ensure that review procedures, per-
4 formance standards, and other requirements de-
5 veloped under subparagraph (B) are sufficiently
6 flexible to allow for differing administrative
7 needs among the States, and that such proce-
8 dures, standards, and requirements are of a na-
9 ture which will permit their use by the States
10 for self-evaluation;

11 “(E) notify all States of proposed proce-
12 dures, standards, and other requirements at
13 least 1 quarter prior to the fiscal year in which
14 such procedures, standards, and other require-
15 ments will be used for conducting reviews for
16 reapproval;

17 “(F) periodically update the systems per-
18 formance standards, system requirements, re-
19 view criteria, objectives, regulations, and guides
20 as the Secretary shall from time to time deem
21 appropriate;

22 “(G) provide technical assistance to States
23 in the development and improvement of the sys-
24 tems so as to continually improve the capacity

1 of such systems to effectively detect cases of
2 fraud or abuse;

3 “(H) for the purpose of ensuring compat-
4 ibility between the State systems and the sys-
5 tems utilized in the administration of title
6 XVIII and title XIX—

7 “(i) develop a uniform identification
8 coding system (to the extent feasible) for
9 providers, other persons receiving pay-
10 ments under the State plans approved
11 under this part or under title XVIII or
12 XIX, and beneficiaries of medical services
13 under such plans or title;

14 “(ii) provide liaison between States
15 and carriers and intermediaries having
16 agreements under title XVIII to facilitate
17 timely exchange of appropriate data; and

18 “(iii) improve the exchange of data
19 between the States and the Secretary with
20 respect to providers and other persons who
21 have been terminated, suspended, or other-
22 wise sanctioned under a State plan ap-
23 proved under this part or under title XVIII
24 or XIX;

1 “(I) develop and disseminate clear defini-
 2 tions of those types of reasonable costs relating
 3 to State systems which are reimbursable under
 4 the provisions of subsection (a)(3) of this sec-
 5 tion; and

6 “(J) develop and disseminate performance
 7 standards for assessing the State’s third party
 8 collection efforts in accordance with section
 9 2102(a)(8)(A)(ii).

10 “(i) PAYMENT PROHIBITED FOR ERRONEOUS EX-
 11 CESS PAYMENTS BEYOND A CERTAIN LEVEL.—

12 “(1) IN GENERAL.—

13 “(A) PAYMENT PROHIBITED.—Notwith-
 14 standing subsection (a)(1), if the ratio of a
 15 State’s erroneous excess payments for long-term
 16 care assistance (as defined in subparagraph
 17 (D)) to its total expenditures for long-term care
 18 assistance under the State plan approved under
 19 this part exceeds 0.03 for any full fiscal year,
 20 then the Secretary shall make no payment for
 21 such fiscal year with respect to so much of such
 22 erroneous excess payments as exceeds such al-
 23 lowable error rate of 0.03.

24 “(B) WAIVER.—The Secretary may waive,
 25 in certain limited cases, all or part of the reduc-

1 tion required under subparagraph (A) with re-
2 spect to any State if such State is unable to
3 reach the allowable error rate for a period or
4 fiscal year despite a good faith effort by such
5 State.

6 “(C) ESTIMATIONS.—In estimating the
7 amount to be paid to a State under subsection
8 (c), the Secretary shall take into consideration
9 the limitation on Federal financial participation
10 imposed by subparagraph (A) and shall reduce
11 the estimate the Secretary makes under sub-
12 section (c)(1), for purposes of payment to the
13 State under subsection (c)(2), in light of any
14 expected erroneous excess payments for long-
15 term care assistance (estimated in accordance
16 with such criteria, including sampling proce-
17 dures, as the Secretary may prescribe and sub-
18 ject to subsequent adjustment, if necessary,
19 under subsection (c)(2)).

20 “(D) DEFINITION.—

21 “(i) IN GENERAL.—For purposes of
22 this subsection, the term ‘erroneous excess
23 payments for long-term care assistance’
24 means the total of—

1 “(I) payments under the State
2 plan with respect to ineligible individ-
3 uals and families, and

4 “(II) overpayments on behalf of
5 eligible individuals and families by
6 reason of error in determining the
7 amount of expenditures for long-term
8 care services required of an individual
9 or a family as a condition of eligi-
10 bility.

11 “(ii) INELIGIBLES.—In determining
12 the amount of erroneous excess payments
13 for long-term care assistance to an ineli-
14 gible individual or family under clause
15 (i)(I), if such ineligibility is the result of
16 an error in determining the amount of the
17 resources of such individual or family, the
18 amount of the erroneous excess payment
19 shall be the smaller of (I) the amount of
20 the payment with respect to such individ-
21 ual or family, or (II) the difference be-
22 tween the actual amount of such resources
23 and the allowance resource level estab-
24 lished under the State plan.

1 “(iii) ERRORS.—In determining the
2 amount of erroneous excess payments for
3 long-term care assistance to an individual
4 or family under clause (i)(II), the amount
5 of the erroneous excess payment shall be
6 the smaller of (I) the amount of the pay-
7 ment on behalf of the individual or family,
8 or (II) the difference between the actual
9 amount incurred for long-term care serv-
10 ices by the individual or family and the
11 amount which should have been incurred in
12 order to establish eligibility for long-term
13 care assistance.

14 “(iv) THIRD-PARTY LIABILITY.—In
15 determining the amount of erroneous ex-
16 cess payments, there shall not be included
17 any error resulting from a failure of an in-
18 dividual to cooperate or give correct infor-
19 mation with respect to third-party liability
20 as required under section 2107(a)(1)(B) or
21 402(a)(26)(C).

22 “(E) EXCLUSIONS.—For purposes of sub-
23 paragraph (D), there shall be excluded, in de-
24 termining both erroneous excess payments

1 made for long-term care assistance and total
2 expenditures for long-term care assistance—

3 “(i) payments with respect to any in-
4 dividual whose eligibility for long-term care
5 assistance was determined exclusively by
6 the Secretary under an agreement pursu-
7 ant to section 1634 and such other classes
8 of individuals as the Secretary may by reg-
9 ulation prescribe whose eligibility was de-
10 termined in part under such an agreement;
11 and

12 “(ii) payments made as the result of
13 a technical error.

14 “(2) PROVISION OF INFORMATION.—The State
15 agency administering the plan approved under this
16 part shall, at such times and in such form as the
17 Secretary may specify, provide information on the
18 rates of erroneous excess payments made (or ex-
19 pected, with respect to future periods specified by
20 the Secretary) in connection with its administration
21 of such plan, together with any other data the Sec-
22 retary requests that are reasonably necessary for the
23 Secretary to carry out the provisions of this sub-
24 section.

25 “(3) STATE FAILURE TO COOPERATE.—

1 “(A) IN GENERAL.—If a State fails to co-
2 operate with the Secretary in providing infor-
3 mation necessary to carry out this subsection,
4 the Secretary, directly or through contractual
5 or such other arrangements as the Secretary
6 may find appropriate, shall establish the error
7 rates for that State on the basis of the best
8 data reasonably available to the Secretary and
9 in accordance with such techniques for sam-
10 pling and estimating as the Secretary finds ap-
11 propriate.

12 “(B) REDUCTION FOR COSTS.—In any
13 case in which it is necessary for the Secretary
14 to exercise the Secretary’s authority under sub-
15 paragraph (A) to determine a State’s error
16 rates for a fiscal year, the amount that would
17 otherwise be payable to such State under this
18 part for quarters in such year shall be reduced
19 by the costs incurred by the Secretary in mak-
20 ing (directly or otherwise) such determination.

21 “(4) APPLICABILITY.—This subsection shall not
22 apply with respect to Puerto Rico, Guam, the Virgin
23 Islands, the Northern Mariana Islands, or American
24 Samoa.

1 “(j) PAYMENT PROHIBITED FOR ASSISTANCE TO
2 NONRESIDENT ALIENS.—Notwithstanding the preceding
3 provisions of this section, no payment may be made to a
4 State under this section for long-term care assistance fur-
5 nished to an alien who is not lawfully admitted for perma-
6 nent residence or otherwise permanently residing in the
7 United States under color of law.

8 “(k) DISALLOWANCE OF CLAIMS BY STATES.—

9 “(1) IN GENERAL.—In any case in which the
10 Secretary proposes to disallow under section 1116(d)
11 a claim by a State under this section, the Secretary
12 shall, if the proposed disallowance is described in
13 paragraph (2)(A), follow the procedure described in
14 paragraph (2)(B). The Secretary may disallow such
15 claim only if the State fails to take the action speci-
16 fied in paragraph (2)(B).

17 “(2) APPLICABLE DISALLOWANCES AND PROCE-
18 DURE.—

19 “(A) APPLICABLE DISALLOWANCES.—The
20 procedure described in subparagraph (B) ap-
21 plies to any proposed disallowance where there
22 is no contention by the Secretary that the serv-
23 ices rendered were not medically necessary and
24 appropriate, or that the quality of care provided

1 to eligible individuals was deficient and the pro-
2 posed disallowance is not based upon—

3 “(i) an erroneous determination of eli-
4 gibility of individuals;

5 “(ii) services of a type that are not
6 covered by this part;

7 “(iii) services provided by an ineligible
8 provider;

9 “(iv) erroneous computation of a
10 State’s indirect cost allocation rate or an
11 ineligible provider’s rate;

12 “(v) claims based on an inapplicable
13 Federal long-term care assistance percent-
14 age; or

15 “(vi) failure to comply with utilization
16 control procedures.

17 “(B) PROCEDURE.—In the case of any
18 proposed disallowance described in subpara-
19 graph (A) the Secretary shall notify the State
20 of the Secretary’s intent to disallow a claim.
21 Within 60 days of receipt of such notice, the
22 State may inform the Secretary of its intention
23 to alter its program or practices on a prospec-
24 tive basis to satisfy the matters on which the
25 proposed disallowance is based, in which event

1 the Secretary shall review the State's program
2 or practices, as appropriate, to assure that the
3 necessary changes have been made or will be
4 made within a reasonable time.

5 “(3) DETERMINATION OF AMOUNT OF DIS-
6 ALLOWANCE.—Whenever the Secretary disallows any
7 claim by a State under this section, whether or not
8 described in paragraph (2)(A) of this subsection,
9 and the State exercises its right of reconsideration
10 under section 1116(d), the Department Appeals
11 Board established in the Department of Health and
12 Human Services shall, if such Board upholds the
13 basis for the disallowance, determine whether the
14 amount of the disallowance should be reduced. In
15 making this determination, the Board shall take into
16 account (to the extent the State makes a showing)
17 factors which shall include, but not be limited to—

18 “(A) whether the basis of the disallowance
19 was procedural in nature;

20 “(B) whether the amount of the disallow-
21 ance is proportionate to the error or deficiency
22 on which the disallowance is based;

23 “(C) whether the basis of the disallowance
24 constitutes noncompliance that prevented or

1 materially affected the provision of appropriate
2 services of recipients eligible under this part; or

3 “(D) whether Federal guidance with re-
4 spect to the action that is the basis for the pro-
5 posed disallowance was insufficient and the
6 State made good faith efforts to conform its ac-
7 tion to the intent of the applicable Federal stat-
8 ute or regulation.

9 “(4) NO DISALLOWANCE IF ACTION CONSIST-
10 ENT WITH STATE PLAN.—No disallowance shall be
11 taken or upheld if action of the State on which the
12 disallowance would be based is consistent with its
13 approved State plan.

14 “(5) INTEREST.—In any case of a disallowance
15 as to which the State does not elect to retain the
16 amount of the Federal payment in dispute pending
17 a final determination with respect to such payment
18 amount, and such final determination (either by ad-
19 ministrative or judicial decision) is to the effect that
20 such payment amount, or any portion thereof, shall
21 not be disallowed, the State shall be entitled to in-
22 terest on the amount determined not to be dis-
23 allowed for the period beginning on the date such
24 amount was disallowed and ending on the date of

1 such final determination at the rate specified in sub-
2 section (c)(4).

3 “(6) AUDIT OR FINANCIAL REVIEW.—No dis-
4 allowance of a claim under this section may be taken
5 with respect to any amounts paid to a State unless
6 an audit or financial review with respect to such
7 amounts has been initiated, and the State has been
8 informed that the audit has been initiated, within 3
9 years of the date of filing of the State’s claim for
10 such amounts.

11 “(I) APPLICATION OF RULES REGARDING LIMITA-
12 TIONS ON PROVIDER-RELATED DONATIONS AND HEALTH
13 CARE RELATED TAXES.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), the provisions of subsection (w) of section
16 1903 shall apply to payments to States under this
17 section in the same manner as they apply to pay-
18 ments to States under subsection (a) of such section.

19 “(2) ADDITIONAL HEALTH CARE ITEMS AND
20 SERVICES.—For purposes of paragraph (1), sub-
21 section (w)(7)(A) of section 1903 shall be applied by
22 adding case management services and home and
23 community based services to the health care items
24 and services listed in such subsection.

1 “OPERATION OF STATE PLANS

2 “SEC. 2104. If the Secretary, after reasonable notice
3 and opportunity for hearing to the State agency admin-
4 istering or supervising the administration of the State
5 plan approved under this part, finds—

6 “(1) that the plan has been so changed that it
7 no longer complies with the provisions of section
8 2102; or

9 “(2) that in the administration of the plan
10 there is a failure to comply substantially with any
11 such provision,

12 the Secretary shall notify such State agency that further
13 payments will not be made to the State (or, in the Sec-
14 retary’s discretion, that payments will be limited to cat-
15 egories under or parts of the State plan not affected by
16 such failure), until the Secretary is satisfied that there will
17 no longer be any such failure to comply. Until the Sec-
18 retary is so satisfied, the Secretary shall make no further
19 payments to such State (or shall limit payments to cat-
20 egories under or parts of the State plan not affected by
21 such failure).

22 “OBSERVANCE OF RELIGIOUS BELIEFS

23 “SEC. 2105. Nothing in this part shall be construed
24 to require any State which has a plan approved under this
25 part to compel any person to receive services under the
26 plan (other than for the purpose of discovering and pre-

1 venting the spread of infection or contagious disease or
2 for the purpose of protecting environmental health) if such
3 person objects to the receipt of such services on religious
4 grounds.

5 “INDIAN HEALTH SERVICE PROVIDERS

6 “SEC. 2106. (a) ELIGIBILITY FOR PAYMENT.—An
7 Indian Health Service provider (including a nursing facil-
8 ity, or any other provider of services of a type otherwise
9 covered under the State plan), whether operated by such
10 Service or by an Indian tribe or tribal organization (as
11 those terms are defined in section 4 of the Indian Health
12 Care Improvement Act), shall be eligible for reimburse-
13 ment for long-term care assistance provided under a State
14 plan if and for so long as the provider meets all of the
15 conditions and requirements which are applicable gen-
16 erally to such providers under this part.

17 “(b) SUBMISSION OF PLAN FOR ELIGIBILITY.—Not-
18 withstanding subsection (a), an Indian Health Service pro-
19 vider (including a nursing facility, or any other provider
20 of services of a type otherwise covered under the State
21 plan) which does not meet all of the conditions and re-
22 quirements of this part which are applicable generally to
23 such provider, but which submits to the Secretary within
24 6 months after the date of the enactment of this section
25 an acceptable plan for achieving compliance with such con-
26 ditions and requirements, shall be deemed to meet such

1 conditions and requirements (and to be eligible for reim-
 2 bursement under this part), without regard to the extent
 3 of its actual compliance with such conditions and require-
 4 ments, during the first 12 months after the month in
 5 which such plan is submitted.

6 “ASSIGNMENT OF RIGHTS OF PAYMENT

7 “SEC. 2107. (a) IN GENERAL.—For the purpose of
 8 assisting in the collection of long-term care support pay-
 9 ments and other payments for long-term care owed to re-
 10 cipients of long-term care assistance under the State plan
 11 approved under this part, a State plan for long-term care
 12 assistance shall—

13 “(1) provide that, as a condition of eligibility
 14 for long-term care assistance under the State plan to
 15 an individual who has the legal capacity to execute
 16 an assignment on the individual’s own behalf, the in-
 17 dividual is required—

18 “(A) to assign the State any rights, of the
 19 individual or of any other person who is eligible
 20 for long-term care assistance under this part
 21 and on whose behalf the individual has the legal
 22 authority to execute an assignment of such
 23 rights, to support (specified as support for the
 24 purpose of long-term care by a court or admin-
 25 istrative order) and to payment for long-term
 26 care from any third party; and

1 “(B) to cooperate with the State in identi-
2 fying, and providing information to assist the
3 State in pursuing, any third party who may be
4 liable to pay for care and services available
5 under the plan, unless such individual has good
6 cause for refusing to cooperate as determined
7 by the State agency in accordance with stand-
8 ards prescribed by the Secretary, which stand-
9 ards shall take into consideration the best inter-
10 ests of the individuals involved; and

11 “(2) provide for entering into cooperative ar-
12 rangements (including financial arrangements), with
13 any appropriate agency of any State (including, with
14 respect to the enforcement and collection of rights of
15 payment for long-term care by or through a parent,
16 with a State’s agency established or designated
17 under section 454(3)) and with appropriate courts
18 and law enforcement officials, to assist the agency or
19 agencies administering the State plan with respect
20 to the enforcement and collection of rights to sup-
21 port or payment assigned under this section, and
22 any other matters of common concern.

23 “(b) DISTRIBUTION OF AMOUNTS COLLECTED.—
24 Such part of any amount collected by the State under an
25 assignment made under the provisions of this section shall

1 be retained by the State as is necessary to reimburse the
2 State for long-term care assistance payments made on be-
3 half of an individual with respect to whom such assign-
4 ment was executed (with appropriate reimbursement of
5 the Federal Government to the extent of its participation
6 in the financing of such long-term care assistance), and
7 the remainder of such amount collected shall be paid to
8 such individual.

9 “HOSPITAL PROVIDERS OF NURSING FACILITY SERVICES

10 “SEC. 2108. (a) IN GENERAL.—Notwithstanding any
11 other provision of this part, payment may be made, in ac-
12 cordance with this section, under a State plan approved
13 under this part for nursing facility services furnished by
14 a hospital which has in effect an agreement under section
15 1883 and which, with respect to the provision of such serv-
16 ices, meets the requirements of subsections (b) through
17 (d) of section 1919.

18 “(b) PAYMENT FOR SERVICES.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (3), payment to any such hospital for any
21 nursing facility services furnished pursuant to sub-
22 section (a) shall be at a rate equal to the average
23 rate per patient-day paid for routine services during
24 the previous calendar year under the State plan to
25 nursing facilities located in the State in which the
26 hospital is located. The reasonable cost of ancillary

1 services shall be determined in the same manner as
2 the reasonable cost of ancillary services provided for
3 inpatient hospital services.

4 “(2) ALLOCATION OF COSTS.—With respect to
5 any period for which a hospital has an agreement
6 under section 1883, in order to allocate routine costs
7 between hospital and long-term care services, the
8 total reimbursement for routine services due from all
9 classes of long-term care services, the total reim-
10 bursement for routine services due from all classes
11 of long-term care patients (including title XVIII,
12 title XIX, and private pay patients) shall be sub-
13 tracted from the hospital total routine costs before
14 calculations are made to determine reimbursement
15 for routine hospital services under the State plan.

16 “(3) PAYMENT RATES.—Payment to any hos-
17 pital for any nursing facility services furnished pur-
18 suant to subsection (a) may be made at a payment
19 rate established by the State in accordance with the
20 requirements of section 2102(a)(7)(C)(i).

21 “WITHHOLDING OF FEDERAL SHARE OF PAYMENTS FOR
22 CERTAIN MEDICARE AND MEDICAID PROVIDERS

23 “SEC. 2109. (a) IN GENERAL.—

24 “(1) MEDICARE PROGRAM.—The Secretary may
25 adjust, in accordance with this section, the Federal
26 matching payment to a State with respect to expend-

1 itures for long-term care assistance for services fur-
2 nished in any quarter by—

3 “(A) an institution—

4 “(i) which has or previously had in ef-
5 fect an agreement with the Secretary
6 under section 1866; and

7 “(ii) (I) from which the Secretary has
8 been unable to recover overpayments made
9 under title XVIII, or (II) from which the
10 Secretary has been unable to collect the in-
11 formation necessary to enable the Sec-
12 retary to determine the amount (if any) of
13 the overpayments made to such institution
14 under title XVIII; and

15 “(B) any person—

16 “(i) who (I) has previously accepted
17 payment on the basis of an assignment
18 under section 1842(b)(3)(B)(ii), and (II)
19 during the annual period immediately pre-
20 ceding such quarter submitted no claims
21 for payment under title XVIII which ag-
22 gregated less than the amount of overpay-
23 ments made to such person, and

24 “(ii) (I) from whom the Secretary has
25 been unable to recover overpayments re-

1 ceived in violation of the terms of such as-
2 signment, or (II) from whom the Secretary
3 has been unable to collect the information
4 necessary to enable such person to deter-
5 mine the amount (if any) of the overpay-
6 ments made to such person under title
7 XVIII.

8 “(2) MEDICAID PROGRAM.—The Secretary may
9 adjust, in accordance with this section, the Federal
10 matching payment to a State with respect to expend-
11 itures for long-term care assistance for services fur-
12 nished in any quarter by—

13 “(A) an institution (i) from which the Sec-
14 retary has been unable to recover overpayments
15 made under title XIX, or (ii) from which the
16 Secretary has been unable to collect the infor-
17 mation necessary to enable the Secretary to de-
18 termine the amount (if any) of the overpay-
19 ments made to such institution under title XIX;
20 and

21 “(B) any person (i) from whom the Sec-
22 retary has been unable to recover overpayments
23 made under title XIX, or (ii) from whom the
24 Secretary has been unable to collect the infor-
25 mation necessary to enable such person to de-

1 terminate the amount (if any) of the overpay-
2 ments made to such person under title XIX.

3 “(b) REDUCTION OF PAYMENT TO STATES.—The
4 Secretary may (subject to the remaining provisions of this
5 section) reduce payment to a State under this part for
6 any quarter by an amount equal to the lesser of the Fed-
7 eral matching share of payments to any institution or per-
8 son specified in subsection (a), or the total overpayments
9 to such institution or person under title XVIII or XIX,
10 and may require the State to reduce its payment to such
11 institution or person by such amount.

12 “(c) NOTICE OF REDUCTION.—The Secretary shall
13 not make any adjustment in the payment to a State, nor
14 require any adjustment in the payment to an institution
15 or person pursuant to subsection (b), until after the Sec-
16 retary has provided adequate notice (which shall be not
17 less than 60 days) to the State agency and the institution
18 or person.

19 “(d) REGULATORY PROCEDURES.—The Secretary
20 shall by regulation provide procedures for implementation
21 of this section. Such procedures shall—

22 “(1) determine the amount of the Federal pay-
23 ment to which the institution or person would other-
24 wise be entitled under this section which shall be

1 treated as a setoff against overpayments under title
2 XVIII or XIX; and

3 “(2) assure the restoration to the institution or
4 person of amounts withheld under this section that
5 are ultimately determined to be in excess of overpay-
6 ments under title XVIII or XIX and to which the in-
7 stitution or person would otherwise be entitled under
8 this part.

9 “(e) AMOUNTS RECOVERED RESTORED TO TRUST
10 FUNDS.—The Secretary shall restore to the trust funds
11 established under sections 1817 and 1841, as appropriate,
12 amounts recovered under this section as setoffs against
13 overpayments under title XVIII.

14 “(f) CERTAIN AMOUNTS NOT RECOVERABLE.—Not-
15 withstanding any other provision of this part, an institu-
16 tion or person shall not be entitled to recover from any
17 State any amount in payment for long-term care services
18 under this part that is withheld by the State agency pursu-
19 ant to an order by the Secretary under subsection (b).

20 “PROVISIONS RESPECTING INAPPLICABILITY OF CERTAIN
21 REQUIREMENTS

22 “SEC. 2110. (a) IN GENERAL.—A State shall not be
23 deemed to be out of compliance with the requirements of
24 paragraph (1)(B), (2), or (6) of section 2102(a) solely by
25 reason of the fact that the State (or any political subdivi-
26 sion of the State)—

1 “(1) has entered into a contract with an organi-
2 zation which has agreed to provide care and services
3 in addition to those offered under the State plan to
4 individuals eligible for long-term care assistance who
5 reside in the geographic area served by such organi-
6 zation and who elect to obtain such care and services
7 from such organization; or

8 “(2) restricts for a reasonable period of time
9 the provider or providers from which an individual
10 (eligible for long-term care assistance for items or
11 services under the State plan) can receive such items
12 or services, if—

13 “(A) the State has found, after notice and
14 opportunity for a hearing (in accordance with
15 procedures established by the State), that the
16 individual has utilized such items or services at
17 a frequency or amount not necessary (as deter-
18 mined in accordance with utilization guidelines
19 established by the State), and

20 “(B) under such restriction, individuals eli-
21 gible for long-term care assistance for such
22 services have reasonable access (taking into ac-
23 count geographic location and reasonable travel
24 time) to such services of adequate quality.

1 “(b) CASE MANAGEMENT SERVICES EXEMPTED
2 FROM CERTAIN REQUIREMENTS.—A State may provide,
3 as long-term care assistance, case management services
4 under the plan without regard to the requirements of
5 paragraphs (1)(B) and (2)(B) of section 2102(a). The
6 provision of case management services under this sub-
7 section shall not restrict the choice of the individual to
8 receive long-term care assistance in violation of section
9 2102(a)(6). The State may limit the case managers avail-
10 able with respect to case management services for eligible
11 individuals in order to ensure that the case managers for
12 such individuals are capable of ensuring that such individ-
13 uals receive needed services.

14 “USE OF DEDUCTIBLE, COST SHARING, AND SIMILAR
15 CHARGES

16 “SEC. 2111. (a) IN GENERAL.—The State plan shall
17 provide that any deductible, cost sharing, or similar charge
18 imposed under the plan will be nominal in amount (as de-
19 termined by the Secretary in regulations).

20 “(b) NONDENIAL OF CARE.—The State plan shall re-
21 quire that no provider participating under the State plan
22 may deny care or services to an individual eligible for such
23 care or services under the plan on account of such individ-
24 ual’s inability to pay a deduction, cost sharing, or similar
25 charge. The requirements of this subsection shall not ex-
26 tinguish the liability of the individual to whom the care

1 or services were furnished for payment of the deductible,
 2 cost sharing, or similar charge.

3 “TRANSFERS OF ASSETS, TRUSTS, LIENS, AND
 4 ADJUSTMENTS AND RECOVERIES

5 “SEC. 2112. (a) PROHIBITION ON ELIGIBILITY
 6 UNDER CERTAIN CIRCUMSTANCES.—

7 “(1) REQUIRED PERIODS OF INELIGIBILITY.—

8 “(A) IN GENERAL.—In order to meet the
 9 requirements of this section (for purposes of
 10 section 2102(a)(3)(D), the State plan must pro-
 11 vide for a period of ineligibility for long-term
 12 care assistance during the period beginning on
 13 the date specified in subparagraph (C) and
 14 equal to the number of months specified in sub-
 15 paragraph (D) in the case of an individual who,
 16 or whose spouse, at any time on or after the
 17 look-back date specified in subparagraph
 18 (B)(i)—

19 “(i) disposed of assets for less than
 20 fair market value;

21 “(ii) transferred assets (or ownership
 22 or control of such assets) to a trustee, fi-
 23 duciary, or other person or entity; or

24 “(iii) converted countable resources to
 25 noncountable resources.

26 “(B) LOOK-BACK DATE.—

1 “(i) IN GENERAL.—The look-back
2 date specified in this subparagraph is a
3 date that is—

4 “(I) 36 months (or, in the case of
5 payments from a trust or portions of
6 a trust that are treated as assets dis-
7 posed of by the individual pursuant to
8 paragraph (3)(A)(iii) or (3)(B)(ii) of
9 subsection (b), 60 months) before the
10 date specified in clause (ii); or

11 “(II) at the option of the State,
12 such earlier date as provided by the
13 State where there is reasonable cause
14 to believe that an individual engaged
15 in the activities described in clause (i),
16 (ii), or (iii) of subparagraph (A) solely
17 for the purposes of qualifying for
18 long-term care assistance under this
19 part.

20 “(ii) DATE SPECIFIED.—The date
21 specified in this clause, with respect to—

22 “(I) an institutionalized individ-
23 ual is the first date as of which the
24 individual both is an institutionalized
25 individual and has applied for long-

1 term care assistance under the State
2 plan, or

3 “(II) a noninstitutionalized indi-
4 vidual is the date on which the indi-
5 vidual applies for long-term care as-
6 sistance under the State plan or, if
7 later, the date on which the individual
8 disposes of assets for less than fair
9 market value.

10 “(C) BEGINNING DATE OF PERIOD OF IN-
11 ELIGIBILITY.—The date specified in this sub-
12 paragraph is the first day of the first month in
13 which the individual—

14 “(i) is an institutionalized individual;

15 “(ii) is (or but for the provisions of
16 this subsection would be) entitled to long-
17 term care assistance under the State plan;
18 and

19 “(iii) is receiving or is an applicant
20 for such long-term care assistance.

21 “(D) PERIOD OF INELIGIBILITY.—

22 “(i) INSTITUTIONALIZED INDIVID-
23 UALS.—With respect to an institutionalized
24 individual, the number of months of ineli-

1 gibility under this subparagraph for an in-
2 dividual shall be equal to—

3 “(I) the total, cumulative uncom-
4 pensated value of all assets or re-
5 sources transferred by the individual
6 (or individual’s spouse) on or after the
7 look-back date specified in subpara-
8 graph (B)(i), divided by

9 “(II) the average monthly cost to
10 a private patient of nursing facility
11 services in the State (or, at the option
12 of the State, in the community in
13 which the individual is institutional-
14 ized) at the time of application.

15 “(ii) NONINSTITUTIONALIZED INDI-
16 VIDUALS.—With respect to a
17 noninstitutionalized individual, the number
18 of months of ineligibility under this sub-
19 paragraph for an individual shall not be
20 greater than a number equal to—

21 “(I) the total, cumulative uncom-
22 pensated value of all assets trans-
23 ferred by the individual (or individ-
24 ual’s spouse) on or after the look-back

1 date specified in subparagraph (B)(i),
2 divided by

3 “(II) the average monthly cost to
4 a private patient of nursing facility
5 services in the State (or, at the option
6 of the State, in the community in
7 which the individual is institutional-
8 ized) at the time of application.

9 “(iii) REDUCTION IN PERIOD OF IN-
10 ELIGIBILITY.—The number of months of
11 ineligibility otherwise determined under
12 clause (i) or (ii) with respect to the dis-
13 posal of an asset shall be reduced—

14 “(I) in the case of periods of in-
15 eligibility determined under clause (i),
16 by the number of months of ineligibil-
17 ity applicable to the individual under
18 clause (ii) as a result of such disposal,
19 and

20 “(II) in the case of periods of in-
21 eligibility determined under clause (ii),
22 by the number of months of ineligibil-
23 ity applicable to the individual under
24 clause (i) as a result of such disposal.

1 “(2) EXCEPTION TO INELIGIBILITY.—An indi-
 2 vidual shall not be ineligible for long-term care as-
 3 sistance by reason of paragraph (1) to the extent
 4 that—

5 “(A) ownership of the assets was trans-
 6 ferred to—

7 “(i) the spouse of such individual; or

8 “(ii) a child of such individual who—

9 “(I) is under age 21,

10 “(II) with respect to States eligi-
 11 ble to participate in the State pro-
 12 gram established under title XVI, is
 13 blind or permanently and totally dis-
 14 abled, or

15 “(III) with respect to States
 16 which are not eligible to participate in
 17 such program, is blind or disabled as
 18 defined in section 1614 who is deter-
 19 mined by the State to be financially
 20 dependent on such individual;

21 “(B) the assets—

22 “(i) were transferred to, or to a trust
 23 (including a trust described in subsection
 24 (b)(4)) established solely for the benefit of,

1 the individual's child described in subpara-
2 graph (A)(ii)(II), or

3 “(ii) were transferred to a trust (in-
4 cluding a trust described in subsection
5 (b)(4)) established solely for the benefit of
6 an individual under 65 years of age who is
7 disabled (as defined in section 1614(a)(3));

8 “(C) a satisfactory showing is made to the
9 State (in accordance with any regulations pro-
10 mulgated by the Secretary) that—

11 “(i) the individual intended to dispose
12 of the assets either at fair market value, or
13 for other valuable consideration;

14 “(ii) the assets were transferred or
15 converted in accordance with a court order;
16 or

17 “(iii) assets transferred for less than
18 fair market value have been returned to
19 the individual; or

20 “(D) the State determines that denial of
21 eligibility would work an undue hardship.

22 “(3) JOINT OWNERSHIP.—For purposes of this
23 subsection, in the case of an asset held by an indi-
24 vidual in common with another person or persons in
25 a joint tenancy, tenancy in common, or similar ar-

1 rangement, the asset (or the affected portion of such
2 asset) shall be considered to be transferred by such
3 individual when any action is taken, either by such
4 individual or by any other person, that reduces or
5 eliminates such individual's ownership or control of
6 such asset.

7 “(4) PERIODS OF INELIGIBILITY IN ACCORD-
8 ANCE WITH THIS SUBSECTION; APPORTIONING PERI-
9 ODS OF INELIGIBILITY.—A State may not provide
10 for any period of ineligibility for an individual due
11 to transfer of assets for less than fair market value
12 except in accordance with this subsection. In the
13 case of a transfer by the spouse of an individual
14 which results in a period of ineligibility for long-term
15 care assistance under a State plan for such individ-
16 ual, a State shall, using a reasonable methodology
17 (as specified by the Secretary), apportion such pe-
18 riod of ineligibility (or any portion of such period)
19 among the individual and the individual's spouse if
20 the spouse otherwise becomes eligible for long-term
21 care assistance under the State plan.

22 “(b) TRUSTS.—

23 “(1) IN GENERAL.—For purposes of determin-
24 ing an individual's eligibility for, or amount of, bene-
25 fits under a State plan under this part, subject to

1 paragraph (4), the rules specified in paragraph (3)
2 shall apply to a trust established by such individual.

3 “(2) ESTABLISHMENT OF TRUSTS.—

4 “(A) IN GENERAL.—For purposes of this
5 subsection, an individual shall be considered to
6 have established a trust if assets of the individ-
7 ual were used to form all or part of the corpus
8 of the trust and if any of the following individ-
9 uals established such trust other than by will:

10 “(i) The individual.

11 “(ii) The individual’s spouse.

12 “(iii) A person, including a court or
13 administrative body, with legal authority to
14 act in place of or on behalf of the individ-
15 ual or the individual’s spouse.

16 “(iv) A person, including any court or
17 administrative body, acting at the direction
18 or upon the request of the individual or the
19 individual’s spouse.

20 “(B) JOINT OWNERSHIP.—In the case of a
21 trust the corpus of which includes assets of an
22 individual (as determined under subparagraph
23 (A)) and assets of any other person or persons,
24 the provisions of this subsection shall apply to

1 the portion of the trust attributable to the as-
2 sets of the individual.

3 “(C) APPLICABILITY.—Subject to para-
4 graph (4), this subsection shall apply without
5 regard to—

6 “(i) the purposes for which a trust is
7 established,

8 “(ii) whether the trustees have or ex-
9 ercise any discretion under the trust,

10 “(iii) any restrictions on when or
11 whether distributions may be made from
12 the trust, or

13 “(iv) any restrictions on the use of
14 distributions from the trust.

15 “(3) RULES APPLICABLE TO TRUSTS.—

16 “(A) REVOCABLE TRUSTS.—In the case of
17 a revocable trust—

18 “(i) the corpus of the trust shall be
19 considered resources available to the indi-
20 vidual,

21 “(ii) payments from the trust to or
22 for the benefit of the individual shall be
23 considered income of the individual, and

24 “(iii) any other payments from the
25 trust shall be considered assets disposed of

1 by the individual for purposes of sub-
2 section (a).

3 “(B) IRREVOCABLE TRUSTS.—In the case
4 of an irrevocable trust—

5 “(i) if there are any circumstances
6 under which payment from the trust could
7 be made to or for the benefit of the indi-
8 vidual, the portion of the corpus from
9 which, or the income on the corpus from
10 which, payment to the individual could be
11 made shall be considered resources avail-
12 able to the individual, and payments from
13 that portion of the corpus or income—

14 “(I) to or for the benefit of the
15 individual, shall be considered income
16 of the individual, and

17 “(II) for any other purpose, shall
18 be considered a transfer of assets by
19 the individual subject to subsection
20 (a); and

21 “(ii) any portion of the trust from
22 which, or any income on the corpus from
23 which, no payment could under any cir-
24 cumstances be made to the individual shall
25 be considered, as of the date of establish-

1 ment of the trust (or, if later, the date on
2 which payment to the individual was fore-
3 closed) to be assets disposed by the indi-
4 vidual for purposes of subsection (a), and
5 the value of the trust shall be determined
6 for purposes of such subsection by includ-
7 ing the amount of any payments made
8 from such portion of the trust after such
9 date.

10 “(4) EXCEPTIONS.—This subsection shall not
11 apply to any of the following trusts:

12 “(A) A trust containing the assets of an
13 individual under age 65 who is disabled (as de-
14 fined in section 1614(a)(3)) and which is estab-
15 lished for the benefit of such individual by a
16 parent, grandparent, legal guardian of the indi-
17 vidual, or a court if the State will receive all
18 amounts remaining in the trust upon the death
19 of such individual up to an amount equal to the
20 total long-term care assistance paid on behalf of
21 the individual under a State plan under this
22 part.

23 “(B) A trust established in a State for the
24 benefit of an individual if—

1 “(i) the trust is composed only of pen-
2 sion, Social Security, and other income to
3 the individual (and accumulated income in
4 the trust), and

5 “(ii) the State will receive all amounts
6 remaining in the trust upon the death of
7 such individual up to an amount equal to
8 the total long-term care assistance paid on
9 behalf of the individual under a State plan
10 under this part.

11 “(C) A trust containing the assets of an
12 individual who is disabled (as defined in section
13 1614(a)(3)) that meets the following conditions:

14 “(i) The trust is established and man-
15 aged by a non-profit association.

16 “(ii) A separate account is maintained
17 for each beneficiary of the trust, but, for
18 purposes of investment and management of
19 funds, the trust pools these accounts.

20 “(iii) Accounts in the trust are estab-
21 lished solely for the benefit of individuals
22 who are disabled (as defined in section
23 1614(a)(3)) by the parent, grandparent, or
24 legal guardian of such individuals, by such
25 individuals, or by a court.

1 “(iv) To the extent that amounts re-
2 maining in the beneficiary’s account upon
3 the death of the beneficiary are not re-
4 tained by the trust, the trust pays to the
5 State from such remaining amounts in the
6 account an amount equal to the total
7 amount of long-term care assistance paid
8 on behalf of the beneficiary under the
9 State plan under this part.

10 “(5) HARDSHIP PROVISION.—The State agency
11 shall establish procedures (in accordance with stand-
12 ards specified by the Secretary) under which the
13 agency waives the application of this subsection with
14 respect to an individual if the individual establishes
15 that such application would work an undue hardship
16 on the individual as determined on the basis of cri-
17 teria established by the Secretary.

18 “(6) TRUST.—For purposes of this subsection,
19 the term ‘trust’ includes any legal instrument or de-
20 vice that is similar to a trust but includes an annu-
21 ity only to such extent and in such manner as the
22 Secretary specifies.

23 “(c) IMPOSITION OF LIEN.—

24 “(1) IN GENERAL.—In order to meet the re-
25 quirements of this section (for purposes of section

1 2102(a)(3)(D)) a lien may be imposed against the
2 real property of any individual as a condition of re-
3 ceiving payment for long-term care assistance under
4 the State plan.

5 “(2) DISSOLUTION OF LIEN.—Any lien imposed
6 with respect to an individual pursuant to paragraph
7 (1) shall dissolve (without regard to otherwise appli-
8 cable State law) upon that individual’s—

9 “(A)(i) not owing any amounts paid as
10 long-term care assistance under the State plan;
11 and

12 “(ii) no longer receiving long-term care as-
13 sistance under such plan; or

14 “(B) discharge from a nursing facility
15 where the individual makes a reasonable show-
16 ing that such lien imposes an undue hardship.

17 “(d) RECOVERY OF LIEN.—

18 “(1) IN GENERAL.—In order to meet the re-
19 quirements of this section (for purposes of section
20 2102(a)(3)(D)), the State shall seek adjustment or
21 recovery of any long-term care assistance correctly
22 paid on behalf of an individual under the State plan
23 (including foreclosure on a lien imposed under sub-
24 section (c)).

1 “(2) CONDITIONS WHERE ADJUSTMENT OR RE-
2 COVERY PERMITTED.—Any adjustment or recovery
3 under paragraph (1) may be made only—

4 “(A) after the death of the individual and
5 such individual’s surviving spouse, if any; and

6 “(B) at a time when the individual has no
7 surviving child who—

8 “(i) is under age 21;

9 “(ii) with respect to States eligible to
10 participate in the State program estab-
11 lished under title XVI, is blind or perma-
12 nently and totally disabled; or

13 “(iii) with respect to States which are
14 not eligible to participate in such program,
15 is blind or disabled as defined in section
16 1614.

17 “(3) The State agency shall establish proce-
18 dures (in accordance with standards specified by the
19 Secretary) under which the agency shall waive the
20 application of this subsection (other than paragraph
21 (1)(C)) if such application would work an undue
22 hardship as determined on the basis of criteria es-
23 tablished by the Secretary.

24 “(e) DEFINITIONS.—For purposes of this section:

1 “(1) ASSETS.—The term ‘assets’, with respect
2 to an individual, includes all income and resources of
3 the individual and of the individual’s spouse, includ-
4 ing any income or resources which the individual or
5 such individual’s spouse is entitled to but does not
6 receive because of action—

7 “(A) by the individual or such individual’s
8 spouse,

9 “(B) by a person, including a court or ad-
10 ministrative body, with legal authority to act in
11 place of or on behalf of the individual or such
12 individual’s spouse, or

13 “(C) by any person, including any court or
14 administrative body, acting at the direction or
15 upon the request of the individual or such indi-
16 vidual’s spouse.

17 “(2) INCOME.—The term ‘income’ has the
18 meaning given such term in section 1612.

19 “(3) INSTITUTIONALIZED INDIVIDUAL.—The
20 term ‘institutionalized individual’ means an individ-
21 ual who is an inpatient in a nursing facility.

22 “(4) NONINSTITUTIONALIZED INDIVIDUAL.—
23 The term ‘noninstitutionalized individual’ means an
24 individual receiving home and community based
25 services.

7 “SEC. 2113. The provisions of subsections (d) and
8 (e) of section 205 shall apply with respect to this part
9 to the same extent as they are applicable with respect to
10 title II.

13 “SEC. 2114. (a) SPECIAL TREATMENT FOR IM-
14 PAIRED SPOUSES.—

“(1) SUPERSEDES OTHER PROVISIONS.—In determining the eligibility for long-term care assistance of an impaired spouse (as defined in subsection (f)(1)), the provisions of this section supersede any other provision of this part which is inconsistent with them.

21 “(2) No COMPARABLE TREATMENT RE-
22 QUIRED.—Any different treatment provided under
23 this section for impaired spouses shall not require
24 such treatment for other individuals.

1 “(3) DOES NOT AFFECT CERTAIN DETERMINA-
2 TIONS.—Except as this section specifically provides,
3 this section does not apply to—

4 “(A) the determination of what constitutes
5 income or resources, or

6 “(B) the methodology and standards for
7 determining and evaluating income and re-
8 sources.

9 “(4) APPLICATION IN CERTAIN STATES AND
10 TERRITORIES.—

11 “(A) APPLICATION IN STATES OPERATING
12 UNDER DEMONSTRATION PROJECTS.—In the
13 case of any State which is providing long-term
14 care assistance to its residents under waiver
15 granted under section 1115, the Secretary shall
16 require the State to meet the requirements of
17 this section in the same manner as the State
18 would be required to meet such requirement if
19 the State had in effect a plan approved under
20 this part.

21 “(B) NO APPLICATION IN COMMON-
22 WEALTHS AND TERRITORIES.—This section
23 shall only apply to a State that is 1 of the 50
24 States or the District of Columbia.

1 “(5) APPLICATION TO INDIVIDUALS RECEIVING
2 SERVICES FROM ORGANIZATIONS RECEIVING CER-
3 TAIN WAIVERS.—This section applies to individuals
4 receiving institutional or noninstitutional services
5 from any organization receiving a frail elderly dem-
6 onstration project waiver under section 9412(b) of
7 the Omnibus Budget Reconciliation Act of 1986.

8 “(b) RULES FOR TREATMENT OF INCOME.—

9 “(1) SEPARATE TREATMENT OF INCOME.—Dur-
10 ing any month in which an impaired spouse is in the
11 institution, except as provided in paragraph (2) no
12 income of the community spouse shall be deemed
13 available to the impaired spouse.

14 “(2) ATTRIBUTION OF INCOME.—In determin-
15 ing the income of an impaired spouse or community
16 spouse, for purposes of the posteligibility income de-
17 termination described in subsection (d), except as
18 otherwise provided in this section and regardless of
19 any State laws relating to community property or
20 the division of marital property, the following rules
21 apply:

22 “(A) NONTRUST PROPERTY.—Subject to
23 subparagraphs (C) and (D), in the case of in-
24 come not from a trust, unless the instrument

1 providing the income otherwise specifically pro-
2 vides—

3 “(i) if payment of income is made
4 solely in the name of the impaired spouse
5 or the community spouse, the income shall
6 be considered available only to that respec-
7 tive spouse;

8 “(ii) if payment of income is made in
9 the names of the impaired spouse and the
10 community spouse, one-half of the income
11 shall be considered available to each of
12 them; and

13 “(iii) if payment of income is made in
14 the names of the impaired spouse or the
15 community spouse, or both, and to another
16 person or persons, the income shall be con-
17 sidered available to each spouse in propor-
18 tion to the spouse’s interest (or, if payment
19 is made with respect to both spouses and
20 no such interest is specified, one-half of
21 the joint interest shall be considered avail-
22 able to each spouse).

23 “(B) TRUST PROPERTY.—In the case of a
24 trust—

1 “(i) except as provided in clause (ii),
2 income shall be attributed in accordance
3 with the provisions of this part, and

4 “(ii) income shall be considered avail-
5 able to each spouse as provided in the
6 trust, or, in the absence of a specific provi-
7 sion in the trust—

8 “(I) if payment of income is
9 made solely to the impaired spouse or
10 the community spouse, the income
11 shall be considered available only to
12 that respective spouse;

13 “(II) if payment of income is
14 made to both the impaired spouse and
15 the community spouse, one-half of the
16 income shall be considered available to
17 each of them; and

18 “(III) if payment of income is
19 made to the impaired spouse or the
20 community spouse, or both, and to
21 another person or persons, the income
22 shall be considered available to each
23 spouse in proportion to the spouse’s
24 interest (or, if payment is made with
25 respect to both spouses and no such

1 interest is specified, one-half of the
2 joint interest shall be considered avail-
3 able to each spouse).

4 “(C) PROPERTY WITH NO INSTRUMENT.—
5 In the case of income not from a trust in which
6 there is no instrument establishing ownership,
7 subject to subparagraph (D), one-half of the in-
8 come shall be considered to be available to the
9 impaired spouse and one-half to the community
10 spouse.

11 “(D) REBUTTING OWNERSHIP.—The rules
12 of subparagraphs (A) and (C) are superseded to
13 the extent that an impaired spouse can estab-
14 lish, by a preponderance of the evidence, that
15 the ownership interests in income are other
16 than as provided under such subparagraphs.

17 “(c) RULES FOR TREATMENT OF RESOURCES.—

18 “(1) COMPUTATION OF SPOUSAL SHARE AT
19 TIME OF INSTITUTIONALIZATION.—

20 “(A) TOTAL JOINT RESOURCES.—There
21 shall be computed (as of the beginning of the
22 first period of eligibility of the impaired
23 spouse)—

24 “(i) the total value of resources to the
25 extent either the impaired spouse or the

1 community spouse has an ownership inter-
2 est, and

3 “(ii) a spousal share which is equal to
4 one-half of such total value.

5 “(B) ASSESSMENT.—At the request of an
6 impaired spouse or community spouse, as of the
7 beginning of the first period of eligibility of the
8 impaired spouse and upon the receipt of rel-
9 evant documentation of resources, the State
10 shall promptly assess and document the total
11 value described in subparagraph (A)(i) and
12 shall provide a copy of such assessment and
13 documentation to each spouse and shall retain
14 a copy of the assessment for use under this sec-
15 tion. If the request is not part of an application
16 for long-term care assistance under this part,
17 the State may, at its option as a condition of
18 providing the assessment, require payment of a
19 fee not exceeding the reasonable expenses of
20 providing and documenting the assessment. At
21 the time of providing the copy of the assess-
22 ment, the State shall include a notice indicating
23 that the spouse will have a right to a fair hear-
24 ing under subsection (d)(2).

1 “(2) ATTRIBUTION OF RESOURCES AT TIME OF
2 INITIAL ELIGIBILITY DETERMINATION.—In deter-
3 mining the resources of an impaired spouse at the
4 time of application for benefits under this part, re-
5 gardless of any State laws relating to community
6 property or the division of marital property—

7 “(A) except as provided in subparagraph
8 (B), all the resources held by either the im-
9 paired spouse, community spouse, or both, shall
10 be considered to be available to the impaired
11 spouse, and

12 “(B) resources shall be considered to be
13 available to an impaired spouse.

14 “(3) ASSIGNMENT OF SUPPORT RIGHTS.—The
15 impaired spouse shall not be ineligible by reason of
16 resources determined under paragraph (2) to be
17 available for the cost of care where—

18 “(A) the impaired spouse has assigned to
19 the State any rights to support from the com-
20 munity spouse;

21 “(B) the impaired spouse lacks the ability
22 to execute an assignment due to physical or
23 mental impairment, but the State has the right
24 to bring a support proceeding against a commu-
25 nity spouse without such assignment; or

1 “(C) the State determines that denial of
2 eligibility would work an undue hardship.

3 “(4) SEPARATE TREATMENT OF RESOURCES
4 AFTER ELIGIBILITY FOR BENEFITS ESTABLISHED.—
5 During the continuous period in which an impaired
6 spouse is in an institution and after the month in
7 which an impaired spouse is determined to be eligi-
8 ble for benefits under this part, no resources of the
9 community spouse shall be deemed available to the
10 impaired spouse.

11 “(5) RESOURCES DEFINED.—In this section,
12 the term ‘resources’ has the meaning given such
13 term in section 1613 without regard to the exclu-
14 sions described in paragraphs (1) and (2)(A) of sub-
15 section (a) of such section.

16 “(d) PROTECTING INCOME FOR COMMUNITY
17 SPOUSE.—

18 “(1) ALLOWANCES TO BE OFFSET FROM IN-
19 COME OF IMPAIRED SPOUSE.—After an impaired
20 spouse is determined or redetermined to be eligible
21 for long-term care assistance, in determining the
22 amount of the spouse’s income that is to be applied
23 monthly to payment for the costs of care in the in-
24 stitution, there shall be deducted from the spouse’s

1 monthly income the following amounts in the follow-
2 ing order:

3 “(A) A personal needs allowance in an
4 amount not less than the amount specified in
5 section 2102(g)(2)(B).

6 “(B) A community spouse monthly income
7 allowance (as defined in paragraph (2)), but
8 only to the extent income of the impaired
9 spouse is made available to (or for the benefit
10 of) the community spouse.

11 “(C) A family allowance, for each family
12 member, equal to at least one-third of the
13 amount by which the amount described in para-
14 graph (3)(A)(i) exceeds the amount of the
15 monthly income of that family member.

16 In subparagraph (C), the term ‘family member’ only
17 includes minor or dependent children, dependent
18 parents, or dependent siblings of the institutional-
19 ized or community spouse who are residing with the
20 community spouse.

21 “(2) COMMUNITY SPOUSE MONTHLY INCOME
22 ALLOWANCE DEFINED.—In this section (except as
23 provided in paragraph (5)), the ‘community spouse
24 monthly income allowance’ for a community spouse
25 is an amount by which—

1 “(A) except as provided in subsection (d),
2 the minimum monthly maintenance needs allow-
3 ance (established under and in accordance with
4 paragraph (3)) for the spouse, exceeds

5 “(B) the amount of monthly income other-
6 wise available to the community spouse (deter-
7 mined without regard to such an allowance).

8 “(3) ESTABLISHMENT OF MINIMUM MONTHLY
9 MAINTENANCE NEEDS ALLOWANCE.—

10 “(A) IN GENERAL.—Each State shall es-
11 tablish a minimum monthly maintenance needs
12 allowance for each community spouse which,
13 subject to subparagraph (B), is equal to or ex-
14 ceeds 150 percent of one-twelfth of the income
15 official poverty line (as defined in section
16 2115(f)) for a family unit of 2 members plus an
17 excess shelter allowance (as defined in para-
18 graph (4)). A revision of the official poverty line
19 shall apply to long-term care services furnished
20 during and after the second calendar quarter
21 that begins after the date of publication of the
22 revision.

23 “(B) CAP ON MINIMUM MONTHLY MAINTENANCE
24 NEEDS ALLOWANCE.—The minimum
25 monthly maintenance needs allowance estab-

1 lished under subparagraph (A) may not exceed
2 \$1,500 (subject to adjustment under subpara-
3 graph (C) and subsection (e)).

4 “(C) INDEXING DOLLAR AMOUNT.—The
5 dollar amount specified in subparagraph (B)
6 during a fiscal year after fiscal year 1995 shall
7 be increased by the same percentage as the per-
8 centage increase in the consumer price index for
9 all urban consumers (all items; U.S. city aver-
10 age) between September 1994 and the Septem-
11 ber before the fiscal year involved.

12 “(4) EXCESS SHELTER ALLOWANCE DE-
13 FINED.—In paragraph (3)(A)(ii), the term ‘excess
14 shelter allowance’ means, for a community spouse,
15 the amount by which the sum of—

16 “(A) the spouse’s expenses for rent or
17 mortgage payment (including principal and in-
18 terest), taxes and insurance and, in the case of
19 a condominium or cooperative, required mainte-
20 nance charge, for the community spouse’s prin-
21 cipal residence, and

22 “(B) the standard utility allowance used by
23 the State under section 9(e) of the Food Stamp
24 Act of 1977 or, if the State does not use such

1 an allowance, the spouse's actual utility ex-
2 penses,
3 exceeds 30 percent of the amount described in para-
4 graph (3)(A)(i), except that, in the case of a con-
5 dominium or cooperative, for which a maintenance
6 charge is included under subparagraph (A), any al-
7 lowance under subparagraph (B) shall be reduced to
8 the extent the maintenance charge includes utility
9 expenses.

10 “(5) COURT ORDERED SUPPORT.—If a court
11 has entered an order against an impaired spouse for
12 monthly income for the support of the community
13 spouse, the community spouse monthly income al-
14 lowance for the spouse shall be not less than the
15 amount of the monthly income so ordered.

16 “(e) NOTICE AND FAIR HEARING.—

17 “(1) NOTICE.—Upon—

18 “(A) a determination of eligibility for long-
19 term care assistance of an impaired spouse, or

20 “(B) a request by either the impaired
21 spouse, or the community spouse, or a rep-
22 resentative acting on behalf of either spouse,
23 each State shall notify both spouses (in the case de-
24 scribed in subparagraph (A)) or the spouse making
25 the request (in the case described in subparagraph

1 (B)) of the amount of the community spouse month-
 2 ly income allowance (described in subsection
 3 (d)(1)(B), of the amount of any family allowances
 4 (described in subsection (d)(1)(C)), and of the
 5 spouse's right to a fair hearing under this subsection
 6 respecting ownership or availability of income or re-
 7 sources, and the determination of the community
 8 spouse monthly income or resource allowance.

9 “(2) FAIR HEARING.—

10 “(A) IN GENERAL.—If either the impaired
 11 spouse or the community spouse is dissatisfied
 12 with a determination of—

13 “(i) the community spouse monthly
 14 income allowance;

15 “(ii) the amount of monthly income
 16 otherwise available to the community
 17 spouse (as applied under subsection
 18 (d)(2)(B));

19 “(iii) the computation of the spousal
 20 share of resources under subsection (c)(1);
 21 or

22 “(iv) the attribution of resources
 23 under subsection (c)(2);

24 such spouse is entitled to a fair hearing de-
 25 scribed in section 2102(a)(1)(F) with respect to

1 such determination if an application for benefits
2 under this part has been made on behalf of the
3 impaired spouse. Any such hearing respecting
4 the determination of the community spouse re-
5 source allowance shall be held within 30 days of
6 the date of the request for the hearing.

7 “(B) REVISION OF MINIMUM MONTHLY
8 MAINTENANCE NEEDS ALLOWANCE.—If either
9 such spouse establishes that the community
10 spouse needs income, above the level otherwise
11 provided by the minimum monthly maintenance
12 needs allowance, due to exceptional cir-
13 cumstances resulting in significant financial du-
14 ress, there shall be substituted, for the mini-
15 mum monthly maintenance needs allowance in
16 subsection (d)(2)(A), an amount adequate to
17 provide such additional income as is necessary.

18 “(f) DEFINITIONS.—For purposes of this section:

19 “(1) IMPAIRED SPOUSE.—The term ‘impaired
20 spouse’ means an individual who—

21 “(A) is receiving services under this part,

22 and

23 “(B) is married to a spouse who is not a
24 functionally impaired or severely functionally
25 impaired individual;

1 but does not include any such individual who does
2 not meet the requirements of subparagraph (A) for
3 at least 30 days.

4 “(2) COMMUNITY SPOUSE.—The term ‘commu-
5 nity spouse’ means the spouse of a functionally im-
6 paired or severely functionally impaired individual.

7 “DEFINITIONS

8 “SEC. 2115. (a) CASE MANAGEMENT SERVICES.—
9 For purposes of this part, the term ‘case management
10 services’ means services which—

11 “(1) maximize the independent functioning of
12 individuals eligible for long-term care assistance
13 under the State plan in the least restrictive environ-
14 ment possible;

15 “(2) coordinate the most appropriate mixture of
16 long-term care services for such individuals; and

17 “(3) contain costs through the appropriate or-
18 ganization of the available resources and sequencing
19 of services to respond to the functional and long-
20 term care needs of such individuals.

21 “(b) COMPREHENSIVE FUNCTIONAL ASSESSMENT
22 DEFINED.—For purposes of this part, the term ‘com-
23 prehensive functional assessment’ means an assessment
24 which—

25 “(1) is conducted by a qualified community care
26 case manager;

1 “(2) is used to determine whether or not an in-
2 dividual is a functionally impaired individual, a se-
3 verely functionally impaired individual, or a func-
4 tionally impaired child;

5 “(3) uses an instrument which has been speci-
6 fied by the State;

7 “(4) is used in establishing, reviewing, and re-
8 vising an individual’s individual community care
9 plan;

10 “(5) is provided free of charge to the individual
11 receiving the assessment;

12 “(6) includes an interview with the individual
13 and such individual’s primary caregiver, where ap-
14 propriate, to determine the individual’s—

15 “(A) ability or inability to perform the ac-
16 tivities of daily living described in subsection
17 (c)(4);

18 “(B) health status;

19 “(C) mental status;

20 “(D) current living arrangements; and

21 “(E) formal and informal long-term care
22 support systems;

23 “(7) includes a schedule for reassessment of the
24 individual within a reasonable period after the initial
25 assessment if the physical or cognitive status of the

1 individual is determined to be likely to change sig-
2 nificantly;

3 “(8) for each individual who is determined to be
4 a functionally impaired individual, severely function-
5 ally impaired individual, or a functionally impaired
6 child, includes a periodic review of such individual’s
7 status and assessment and a revision of such indi-
8 vidual’s individual community care plan by the quali-
9 fied community care case manager as appropriate,
10 but no less often than once every 6 months;

11 “(9) includes the development of an individual
12 community care plan; and

13 “(10) includes arrangement by the qualified
14 community care case manager, in consultation with
15 the individual’s primary medical care provider, for
16 the provision of appropriate care and services.

17 “(c) FEDERAL LONG-TERM CARE ASSISTANCE PER-
18 CENTAGE DEFINED.—

19 “(1) IN GENERAL.—The term ‘Federal long-
20 term care assistance percentage’ for any State shall
21 be 100 percent less the State percentage, and the
22 State percentage shall be that percentage which
23 bears the same ratio to 45 percent as the square of
24 the per capita income of such State bears to the

1 square of the per capita income of the continental
2 United States (including Alaska and Hawaii).

3 “(2) SPECIAL RULES.—Notwithstanding para-
4 graph (1)—

5 “(A) the Federal long-term care assistance
6 percentage shall in no case be less than 50 per-
7 cent or more than 80 percent,

8 “(B) the Federal long-term care assistance
9 percentage for Puerto Rico, the Virgin Islands,
10 Guam, the Northern Mariana Islands, and
11 American Samoa shall be 50 percent, and

12 “(C) the Federal long-term care assistance
13 percentage shall be 100 percent with respect to
14 amounts expended as long-term care assistance
15 for services which are received through an In-
16 dian Health Service facility whether operated by
17 the Indian Health Service or by an Indian tribe
18 or tribal organization (as defined in section 4 of
19 the Indian Health Care Improvement Act).

20 “(3) DETERMINATION.—The Federal long-term
21 care assistance percentage for any State shall be de-
22 termined and promulgated in accordance with the
23 provisions of section 1101(a)(8)(B).

24 “(d) FUNCTIONALLY IMPAIRED DEFINED.—

1 “(1) FUNCTIONALLY IMPAIRED INDIVIDUAL.—

2 For purposes of this part, the term ‘functionally im-
3 paired individual’ means an individual 6 years of age
4 or older who is certified by a licensed health care
5 practitioner (other than a relative of such individual)
6 as being unable to perform at least 3 of the activi-
7 ties of daily living described in subparagraph (A) of
8 paragraph (4) on a daily basis for a period of at
9 least 60 consecutive days, without substantial assist-
10 ance from another individual (including assistance
11 involving verbal reminding, physical cueing, or sub-
12 stantial supervision).

13 “(2) SEVERELY FUNCTIONALLY IMPAIRED INDI-

14 VIDUAL.—For purposes of this part, the term ‘se-
15 verely functionally impaired individual’ means an in-
16 dividual 6 years of age or older who is certified by
17 a licensed health care practitioner (other than a rel-
18 ative of such individual) as being unable to perform
19 more than 3 of the activities of daily living described
20 in subparagraph (A) of paragraph (4) on a daily
21 basis for a period of at least 60 consecutive days,
22 without substantial assistance from another individ-
23 ual (including assistance involving verbal reminding,
24 physical cueing, or substantial supervision).

25 “(3) FUNCTIONALLY IMPAIRED CHILD.—

1 “(A) IN GENERAL.—For purposes of this
2 part, the term ‘functionally impaired child’
3 means an individual under 6 years of age who
4 is certified by a licensed health care practitioner
5 (other than a relative of such individual) as
6 having comparable levels of functional impair-
7 ment which would entitle such individual to
8 benefits under this part.

9 “(B) COMPARABLE LEVELS OF FUNC-
10 TIONAL IMPAIRMENT.—In subparagraph (A),
11 the term ‘comparable levels of functional im-
12 pairment’ means physical, cognitive, or other
13 impairments that limit the ability of an individ-
14 ual who is under 6 years of age to perform ac-
15 tivities of daily living appropriate for the age of
16 the individual on a daily basis for a period of
17 at least 60 consecutive days and that are com-
18 parable to the physical, cognitive or other im-
19 pairments of a functionally impaired individual
20 or a severely functionally impaired individual.

21 “(4) ACTIVITIES OF DAILY LIVING.—

22 “(A) DESCRIPTION.—The activities of
23 daily living described in this paragraph are—

24 “(i) eating;

25 “(ii) transferring;

1 “(iii) toileting;

2 “(iv) dressing; and

3 “(v) bathing.

4 “(B) REQUIREMENTS ON THE SEC-
5 RETARY.—The Secretary shall develop defini-
6 tions and standards for measuring the ability to
7 perform the activities of daily living described
8 in subparagraph (A) in conjunction with—

9 “(i) experts in gerontology, pediatrics,
10 and functional impairment research;

11 “(ii) representatives from appropriate
12 State agencies that are involved in the pro-
13 vision of long-term care services;

14 “(iii) representatives of providers of
15 long-term care services;

16 “(iv) representatives of insurance
17 companies offering long-term care insur-
18 ance;

19 “(v) representatives of consumers; and

20 “(vi) other individuals determined ap-
21 propriate by the Secretary.

22 “(5) LICENSED HEALTH CARE PRACTI-
23 TIONER.—For purposes of this part, the term ‘li-
24 censed health care practitioner’ means—

1 “(A) a physician or registered professional
2 nurse, or

3 “(B) a qualified community care case man-
4 ager.

5 “(e) HOME AND COMMUNITY BASED SERVICES DE-
6 FINED.—For purposes of this part, the term ‘home and
7 community based services’ means services furnished in a
8 home or other location (but not including such services
9 furnished to an inpatient or resident of a nursing facility)
10 required to meet the individual’s activities of daily living-
11 related needs including the following:

12 “(1) Homemaker services.

13 “(2) Personal care services.

14 “(3) Home health care.

15 “(4) Adult day health care.

16 “(5) Nursing services provided by or under the
17 supervision of a registered nurse.

18 “(6) Physical therapy and related services.

19 “(7) Respite care.

20 “(f) INCOME OFFICIAL POVERTY LINE.—For pur-
21 poses of this part, the term ‘income official poverty line’
22 means the income official poverty line (as defined by the
23 Office of Management and Budget, and revised annually
24 in accordance with section 673(2) of the Omnibus Budget
25 Reconciliation Act of 1981).

1 “(g) INDIVIDUAL COMMUNITY CARE PLAN DE-
2 FINED.—For purposes of this part, the term ‘individual
3 community care plan’ means a written plan which—

4 “(1) is in accordance with the long-term care
5 service needs of the individual and the availability of
6 the appropriate care and services;

7 “(2) identifies—

8 “(A) the long-term care problems and
9 needs of the individual;

10 “(B) the mix of formal and informal serv-
11 ices and support systems that are available to
12 meet the long-term care service needs of the in-
13 dividual;

14 “(C) the goals for the individual;

15 “(D) the appropriate services necessary to
16 meet such needs; and

17 “(E) the arrangements made for appro-
18 priate care and services;

19 “(3) is established, and is periodically reviewed
20 and revised, by a qualified community care case
21 manager in consultation with the individual’s pri-
22 mary medical care provider, after a face-to-face
23 interview with the individual and such individual’s
24 spouse or primary caregiver, where appropriate, and

1 based upon the most recent comprehensive func-
2 tional assessment of such individual;

3 “(4) specifies, within any amount, duration,
4 and scope, limitations imposed on care and services
5 provided under the State plan, and indicates the in-
6 dividual’s preferences for the types and providers of
7 services;

8 “(5) may specify other services required by
9 such individual; and

10 “(6) does not restrict or otherwise limit the spe-
11 cific persons or individuals (who are competent and
12 authorized by the State to provide home and com-
13 munity based services under the State plan) who will
14 provide the home and community based services de-
15 scribed, except as otherwise described in this part.

16 “(h) LONG-TERM CARE ASSISTANCE DEFINED.—

17 “(1) IN GENERAL.—For purposes of this part,
18 the term ‘long-term care assistance’ means payment
19 of part or all of the cost of the following care and
20 services for individuals described in section
21 2102(a)(2)(A):

22 “(A) Case management services provided
23 by a qualified community care case manager.

24 “(B) Nursing facility services (other than
25 services in an institution for mental diseases).

1 “(C) Home and community based services.

2 “(D) Any other type of long-term care
3 service (other than room and board) recognized
4 under State law as specified by the Secretary.

5 “(2) SPECIAL RULE.—The term ‘long-term care
6 assistance’ does not include any payment of part or
7 all of the cost of the care and services described in
8 paragraph (1) for an individual described in section
9 2102(a)(2)(A) who is an inmate of a public institu-
10 tion.

11 “(i) NURSING FACILITY DEFINED.—For purposes of
12 this part, the term ‘nursing facility’ has the meaning given
13 such term under section 1919 and which meets the re-
14 quirements for such a facility described in such section.

15 “(j) NURSING FACILITY SERVICES DEFINED.—For
16 purposes of this part, the term ‘nursing facility services’
17 means services which are or were required to be given an
18 individual who needs or needed, on a daily basis, nursing
19 care (provided directly by or requiring the supervision of
20 nursing personnel) which as a practical matter can only
21 be provided in a nursing facility on an inpatient basis.

22 “(k) QUALIFIED COMMUNITY CARE CASE MAN-
23 AGER.—For purposes of this part, the term ‘qualified com-
24 munity care case manager’ means a person or entity
25 which—

1 “(1) provides case management services to an
2 individual who is eligible for long-term care assist-
3 ance under the State plan;

4 “(2) is not a relative of the individual receiving
5 such case management services;

6 “(3) has experience in assessing individuals’
7 functional and cognitive impairment;

8 “(4) has experience or has been trained in es-
9 tablishing, and in periodically reviewing and revising,
10 individual community care plans and in the provision
11 of case management services to individuals who are
12 eligible for long-term care assistance under this part;

13 “(5) completes the individual community care
14 plan in a timely manner and reviews and discusses
15 new and revised individual community care plans
16 with the individual or such individual’s primary
17 caregiver or both; and

18 “(6) meets such other standards established by
19 the Secretary or the State which may include stand-
20 ards which assure—

21 “(A) the quality of case management serv-
22 ices; and

23 “(B) that individuals whose home and
24 community based services they manage are not

1 at risk of financial exploitation due to such a
2 manager.

3 “(l) RELATIVE DEFINED.—For purposes of this part,
4 the term ‘relative’ means an individual bearing a relation-
5 ship to another individual which is described in para-
6 graphs (1) through (8) of section 152(a) of the Internal
7 Revenue Code of 1986.

8 “(m) STATE LONG-TERM CARE FRAUD CONTROL
9 UNIT DEFINED.—For purposes of this part, the term
10 ‘State long-term care fraud control unit’ means an identi-
11 fiable entity of the State government which the Secretary
12 certifies (and annually recertifies) as meeting the require-
13 ments described in section 1903(q), and such entity may
14 be the same entity as the medicaid fraud unit described
15 in such section.

16 “PART B—SECURE CHOICE INSURANCE PROGRAM

17 “PURPOSE

18 “SEC. 2131. This part establishes a public-private
19 partnership to provide long-term care assistance to indi-
20 viduals through the expanded availability of long-term
21 care insurance policies which cover care and services that
22 are subsidized by Federal and State funding.

23 “DEFINITIONS

24 “SEC. 2132. For purposes of this part:

1 “(1) ACTIVITIES OF DAILY LIVING.—The term
2 ‘activities of daily living’ refers to the activities de-
3 scribed in section 2115(d)(4).

4 “(2) BENEFIT SUBSIDY.—The term ‘benefit
5 subsidy’ means the amount determined under sec-
6 tion 2138(b)(2).

7 “(3) CASE MANAGEMENT SERVICES.—The term
8 ‘case management services’ has the meaning pro-
9 vided in section 2115(a).

10 “(4) ELIMINATION PERIOD.—The term ‘elim-
11 ination period’ means the period of time beginning on
12 the date on which a policyholder qualifies for bene-
13 fits under a qualified long-term care insurance policy
14 issued under this part during which no benefits
15 under such policy will be paid.

16 “(5) FUNCTIONALLY IMPAIRED INDIVIDUAL.—
17 The term ‘functionally impaired individual’ has the
18 meaning provided in section 2115(d)(1).

19 “(6) SEVERELY FUNCTIONALLY IMPAIRED INDIVIDUAL.—The term ‘severely functionally impaired
20 individual’ has the meaning provided in section
21 2115(d)(2).

22 “(7) HOME AND COMMUNITY BASED SERV-
23 ICES.—The term ‘home and community based serv-
24 ices’ has the meaning provided in section 2115(e).
25

1 “(8) INCOME OFFICIAL POVERTY LINE.—The
2 term ‘income official poverty line’ has the meaning
3 provided in section 2115(f).

4 “(9) NURSING FACILITY SERVICES.—The term
5 ‘nursing facility services’ has the meaning provided
6 in section 2115(j).

7 “(10) POLICYHOLDER.—The term ‘policyholder’
8 means an individual who purchases a qualified long-
9 term care insurance policy.

10 “(11) QUALIFIED CASE MANAGER.—The term
11 ‘qualified case manager’ means a qualified commu-
12 nity care case manager as defined in section
13 2115(k).

14 “(12) QUALIFIED INSURER.—The term ‘quali-
15 fied insurer’ means an entity that is certified by the
16 Standard and Performance Organization of a State
17 (established under section 2141) as an entity that—

18 “(A) is licensed or certified under applica-
19 ble State law to sell insurance in the State;

20 “(B) complies with State laws and meets
21 or exceeds insurance standards of the National
22 Association of Insurance Commissioners, adopt-
23 ed as of January of 1993;

24 “(C) uses case management services to
25 monitor the needs of policyholders;

1 “(D) guarantees a loss ratio of not less
2 than 60 percent for individual and group long-
3 term care policies;

4 “(E) provides the Standards and Perform-
5 ance Organization with the underwriting cri-
6 teria used by the insurer and such other infor-
7 mation as may be required by such Organiza-
8 tion; and

9 “(F) meets any other requirements estab-
10 lished by the State insurance commission.

11 “(13) QUALIFIED LONG-TERM CARE INSURANCE
12 POLICY.—The term ‘qualified long-term care insur-
13 ance policy’ means an insurance policy that meets
14 the requirements of section 2134.

15 “(14) QUALIFIED PROVIDER.—The term ‘quali-
16 fied provider’ means an individual or entity—

17 “(A) that provides long-term care services
18 for which reimbursement is available under a
19 qualified long-term care insurance policy; and

20 “(B) is in compliance with licensure and
21 certification standards established by the State
22 under part A.

23 “ESTABLISHMENT OF PROGRAM

24 “SEC. 2133. There is established a program (to be
25 known as the ‘Secure Choice Insurance Program’) under
26 which—

1 “(1) each State shall—

2 “(A) ensure that qualified insurers, quali-
3 fied long-term care insurance policies, and
4 qualified providers within the State meet the re-
5 quirements under this part;

6 “(B) ensure that individuals have access to
7 qualified long-term care insurance policies;

8 “(C) ensure that care and services pro-
9 vided under any long-term care insurance policy
10 comply with the requirements of this part;

11 “(D) pay the benefit subsidy for the costs
12 of care and services provided under qualified
13 long-term care insurance policies as provided in
14 section 2138(b)(2);

15 “(E) establish a Standards and Perform-
16 ance Organization in accordance with section
17 2141;

18 “(F) prepare and submit to the Secretary
19 such reports as the Secretary may require, in
20 such form, containing such information, and
21 complying with such requirements as the Sec-
22 retary determines necessary to assure the
23 soundness, correctness, nonduplicative nature,
24 and verification of such reports; and

1 “(G) otherwise comply with the require-
2 ments of this part; and

3 “(2) the Federal government shall contribute
4 funds to reimburse the State for a portion of the ex-
5 penditures by the State, in accordance with section
6 2139.

7 “REQUIREMENTS ON QUALIFIED LONG-TERM CARE
8 INSURANCE POLICIES

9 “SEC. 2134. (a) IN GENERAL.—An insurance policy
10 shall be treated as a qualified long-term care insurance
11 policy meeting the requirements of this section if the pol-
12 icy—

13 “(1) is approved for sale in the State by the
14 State insurance commission;

15 “(2) offers benefits that meet the requirements
16 of section 2135;

17 “(3) offers premiums that meet the require-
18 ments of section 2136;

19 “(4) meets the portability requirements of sec-
20 tion 2137;

21 “(5) provides payment for care and services
22 furnished under such policy in accordance with sec-
23 tion 2138(a);

24 “(6) provides for no more than a 30 cumulative
25 day elimination period; and

1 “(7) meets the standards for long-term care in-
 2 surance policies under subsection (h) of section
 3 7702B of the Internal Revenue Code of 1986 and
 4 subsections (c), (d), and (e) of section 4980C of
 5 such Code.

6 “BENEFITS UNDER QUALIFIED LONG-TERM CARE

7 INSURANCE POLICIES

8 “SEC. 2135. (a) SERVICES.—

9 “(1) MINIMUM BENEFITS.—

10 “(A) IN GENERAL.—Qualified long-term
 11 care insurance policies shall cover at least—

12 “(i) with respect to policyholders who
 13 are functionally impaired individuals, home
 14 and community based services and case
 15 management services; and

16 “(ii) with respect to policyholders who
 17 are severely functionally impaired individ-
 18 uals, nursing facility services, home and
 19 community based services, and case man-
 20 agement services.

21 “(B) LIMITATIONS.—Qualified long-term
 22 care insurance policies shall pay only for serv-
 23 ices described in subparagraph (A)—

24 “(i) that are appropriate to assist a
 25 policyholder in performing activities of
 26 daily living, as determined by a qualified

1 case manager and specified under a writ-
2 ten plan of care; and

3 “(ii) that are provided by qualified
4 providers.

5 “(2) ADDITIONAL BENEFITS.—Qualified insur-
6 ers may offer qualified long-term care insurance
7 policies that provide for benefits in addition to those
8 required under paragraph (1) if such policies are ap-
9 proved by the State insurance commission as meet-
10 ing the requirements of this section.

11 “(3) REQUIREMENTS ON CASE MANAGEMENT
12 SERVICES.—Any case management services fur-
13 nished under a qualified long-term care insurance
14 policy shall be provided in accordance with para-
15 graph (4) and the standards established by the
16 Standards and Performance Organization for the
17 State.

18 “(4) PROVISION OF CASE MANAGEMENT SERV-
19 ICES.—

20 “(A) ASSIGNMENT.—Upon a preliminary
21 determination that a policyholder may be in
22 need of care and services under a qualified
23 long-term care insurance policy, the qualified
24 insurer shall ensure that a qualified case man-

1 ager is assigned to provide case management
2 services for such policyholder.

3 “(B) ACTIVITIES.—

4 “(i) BENEFITS ASSESSMENT.—An as-
5 sessment shall be made by a qualified case
6 manager to determine whether the policy-
7 holder is in need of care and services under
8 the qualified long-term care insurance pol-
9 icy. In making such assessment, the quali-
10 fied case manager shall conduct an inter-
11 view with the policyholder to determine the
12 functional level (in terms of performance of
13 activities of daily living) and cognitive im-
14 pairment status of the policyholder. Such
15 benefits assessment shall include an assess-
16 ment of the policyholder’s—

17 “(I) ability or inability to per-
18 form any activities of daily living;

19 “(II) health status;

20 “(III) mental status;

21 “(IV) current living arrange-
22 ments; and

23 “(V) use of formal and informal
24 long-term care support systems.

1 If the health or mental condition of the
2 policyholder is determined to be likely to
3 change, the qualified case manager shall
4 reassess such policyholder within a reason-
5 able period of time after such initial as-
6 sessment, as determined appropriate by the
7 qualified case manager in consultation with
8 the appropriate qualified insurer.

9 “(ii) CARE PLAN DEVELOPMENT.—
10 After the qualified case manager conducts
11 the benefits assessment of the policyholder,
12 the case manager shall develop a written
13 care plan that is in accordance with the
14 care and service needs of the policyholder
15 and the availability of the appropriate care
16 and services. The care plan shall identify—

17 “(I) the long-term care problems
18 and needs of the policyholder;

19 “(II) the mix of formal and infor-
20 mal services and support systems that
21 are available to meet the long-term
22 care and service needs of the policy-
23 holder;

24 “(III) the goals for the policy-
25 holder; and

1 “(IV) the appropriate services
2 necessary to meet such needs.

3 “(iii) CARE PLAN IMPLEMENTA-
4 TION.—After a face-to-face interview with
5 the policyholder and such policyholder’s
6 spouse or primary caregiver, where appro-
7 priate, the qualified case manager, in con-
8 sultation with the policyholder’s primary
9 medical care provider, shall arrange for the
10 provision of appropriate care and services.
11 The qualified case manager shall assist in
12 making the necessary service arrangements
13 for the implementation of the care plan to
14 the extent that the policyholder consents.

15 “(iv) CARE PLAN MONITORING.—The
16 qualified case manager shall monitor the
17 delivery of services to the policyholder, the
18 quality of care provided, and the status of
19 the policyholder. Periodic reassessments of
20 the status and needs of the policyholder,
21 and revisions of the care plan, shall be
22 made by the qualified case manager as ap-
23 propriate. Such reassessments shall be con-
24 ducted not less than every 6 months. If the
25 policyholder is no longer eligible for bene-

1 fits as a result of improved health condi-
2 tions, death, or depletion of the maximum
3 lifetime benefit, the qualified case man-
4 ager, in consultation with the policy-
5 holder's primary medical care provider,
6 shall discharge the case.

7 “(b) MAXIMUM DAILY AND LIFETIME BENEFITS.—

8 “(1) MAXIMUM DAILY BENEFITS.—

9 “(A) IN GENERAL.—Each qualified long-
10 term care insurance policy shall provide for a
11 maximum daily benefit payable for nursing fa-
12 cility services and a maximum daily benefit pay-
13 able for home and community based services.

14 “(B) INCREASES IN MAXIMUM DAILY BEN-
15 EFITS.—The maximum daily benefits under
16 subparagraph (A) shall be increased at a
17 compounded rate of 5 percent per year.

18 “(2) MAXIMUM LIFETIME BENEFIT.—

19 “(A) IN GENERAL.—Each qualified long-
20 term care insurance policy shall offer a maxi-
21 mum lifetime benefit equal to the amount deter-
22 mined under subparagraph (B). The maximum
23 lifetime benefit shall be increased at a
24 compounded rate of 5 percent per year.

1 “(B) AMOUNT OF MAXIMUM LIFETIME
2 BENEFIT.—The amount determined under this
3 subparagraph shall be an amount equal to—

4 “(i) for qualified long-term care insur-
5 ance policies issued during fiscal year
6 1995, an amount equal to \$60,000 in-
7 creased or decreased by the percentage by
8 which the cost of furnishing services under
9 such policies in the State is greater or less-
10 er than median cost of furnishing such
11 services in all States, as determined by the
12 Secretary; and

13 “(ii) for qualified long-term care in-
14 surance policies issued during fiscal year
15 1996 and succeeding fiscal years, an
16 amount equal to the amount determined
17 under this subparagraph for the preceding
18 fiscal year updated by the estimated per-
19 centage change in the Consumer Price
20 Index from the midpoint of the preceding
21 fiscal year through the midpoint of such
22 succeeding fiscal year, with appropriate ad-
23 justments to reflect previous
24 underestimations or overestimations in the
25 estimated percentage change in that index.

1 “(C) USE.—The maximum lifetime benefit
2 under subparagraph (A) may be used to pay for
3 case management services, nursing facility serv-
4 ices, and home and community based services.

5 “(D) TERM OF POLICY.—Coverage under a
6 qualified long-term care insurance policy shall
7 continue for the life of the policyholder or until
8 the maximum lifetime benefit has been de-
9 pleted.

10 “PREMIUMS UNDER QUALIFIED LONG-TERM CARE
11 INSURANCE POLICIES

12 “SEC. 2136. (a) AMOUNT.—

13 “(1) IN GENERAL.—The amount of the pre-
14 mium to be charged by a qualified insurer for a
15 qualified long-term care insurance policy shall be de-
16 termined by each qualified insurer, subject to State
17 insurance regulations.

18 “(2) PREMIUM RATE STRUCTURE.—The State
19 insurance commission shall ensure that the premium
20 rate structure applicable to a qualified long-term
21 care insurance policy remains level throughout the
22 life of the policy.

23 “(3) REDUCED PREMIUMS.—

24 “(A) IN GENERAL.—A policyholder shall be
25 eligible for reduced premiums under the policy-
26 holder’s qualified long-term care insurance pol-

1 icy if the policyholder's income during any pe-
2 riod determined appropriate by the State
3 Standards and Performance Organization does
4 not equal or exceed 400 percent of the income
5 official poverty line for such period. Such re-
6 duced premiums shall remain in effect for a pe-
7 riod determined appropriate by such Organiza-
8 tion.

9 “(B) DETERMINATION OF AMOUNT OF RE-
10 DUCTION.—The amount of the premium reduc-
11 tion under subparagraph (A) shall be based on
12 a sliding scale established by the State Stand-
13 ards and Performance Organization. The maxi-
14 mum amount of a premium reduction shall be
15 an amount equal to 75 percent of the premium
16 amount and shall apply in the case of a policy-
17 holder with an income at or below 100 percent
18 of the income official poverty line.

19 “(b) CESSATION OF PREMIUM PAYMENTS.—A quali-
20 fied long-term care insurance policy shall provide that,
21 after the expiration of a 30-consecutive day period during
22 which nursing facility service or home and community
23 based service benefits are paid under the policy, the policy-
24 holder shall no longer be required to pay the premium due
25 under such policy if the policyholder remains continuously

1 eligible for and receives benefits for which reimbursement
2 is available under the policy.

3 “(c) REVIEW OF PREMIUM RATE STRUCTURES.—

4 “(1) IN GENERAL.—The State insurance com-
5 mission, at least once during each consecutive 3-year
6 period, shall review the premium rate structure ap-
7 plicable to a qualified long-term care insurance pol-
8 icy for the purpose of determining whether to permit
9 adjustments to be made by a qualified insurer to
10 such premium rate structure.

11 “(2) APPROVALS OF PREMIUM RATE STRUC-
12 TURE CHANGE.—

13 “(A) APPROVAL REQUIRED.—A qualified
14 insurer may not adjust the premium rate struc-
15 ture for a qualified long-term care insurance
16 policy unless such adjustment is approved by
17 the State insurance commission.

18 “(B) REVIEW UNDER PART A.—For pur-
19 poses of determining whether an adjustment in
20 a premium rate structure should be approved
21 under subparagraph (A), the State insurance
22 commission, at least once during each consecu-
23 tive 3-year period, shall review the payment
24 rates applicable to services provided under part
25 A of this title. The State insurance commission

1 may approve a change in the premium rate
 2 structure applicable to a qualified long-term
 3 care insurance policy for qualified insurers if
 4 the rate of increase in payment rates for serv-
 5 ices provided under part A differs significantly
 6 from the rate of increase for maximum daily
 7 benefit amounts under section 2135(b)(1)(B).

8 “(C) ADDITIONAL REQUIREMENTS FOR
 9 GROUP POLICY PREMIUM RATE STRUCTURE AD-
 10 JUSTMENTS.—Premium rate structure adjust-
 11 ments for group qualified long-term care insur-
 12 ance policies shall be permitted under this sec-
 13 tion only—

14 “(i) on a class basis;

15 “(ii) if such adjustment is applied to
 16 all individuals in the particular enrollment
 17 class; and

18 “(iii) if such adjustment meets all ap-
 19 propriate State requirements for premium
 20 rate structure adjustments required under
 21 applicable State law.

22 “(d) POLICY LAPSES FOR FAILURE TO PAY PRE-
 23 MIUM.—

24 “(1) IN GENERAL.—Except as provided in para-
 25 graph (2), a qualified long-term care insurance pol-

1 icity shall provide that if a scheduled premium for
2 such policy is not paid, the policy will not lapse prior
3 to the expiration of a 60-day period beginning on the
4 date on which such premium is due for failure to
5 pay premiums and such policy shall remain in force
6 during such 60-day period.

7 “(2) REINSTATEMENT.—A qualified insurer
8 may elect to reinstate a qualified long-term care in-
9 surance policy that has lapsed. The acceptance of a
10 premium payment by a qualified insurer, after the
11 expiration of the period referred to in paragraph (1),
12 shall constitute a reinstatement of the policy to
13 which such premium is applied and no application
14 for such reinstatement shall be required. No under-
15 writing or new age-related premiums shall be per-
16 mitted in the case of such reinstatements.

17 “PORTABILITY REQUIREMENTS

18 “SEC. 2137. (a) GROUP POLICIES.—In the case of
19 a qualified long-term care insurance policy that is offered
20 in the form of a group insurance policy, the qualified in-
21 surer providing such policy shall ensure that the policy in-
22 cludes a continuation and conversion of coverage provision
23 that permits a policyholder who is no longer part of the
24 group to make direct premium payments to the insurer,
25 as provided under this part, to keep such policy from laps-
26 ing. For the 18-month period beginning on the date a pol-

1 icyholder leaves a group, the premium amount required
2 to be paid by such policyholder shall be the amount in
3 effect on such date.

4 “(b) POLICYHOLDERS WHO CHANGE STATE OF RES-
5 IDENCE.—

6 “(1) IN GENERAL.—If a policyholder residing in
7 a State has purchased a qualified long-term care in-
8 surance policy under this part and such policyholder
9 at a later date changes the policyholder’s residence
10 to another State, such policyholder shall convert to
11 a qualified long-term care insurance policy offered
12 by a qualified insurer in the State of new residence
13 as provided in this part.

14 “(2) RESPONSIBILITIES OF STATE OF NEW
15 RESIDENCE.—In the case of a policyholder who con-
16 verts the policyholder’s qualified long-term care in-
17 surance policy under paragraph (1), the State of
18 new residence shall—

19 “(A) upon the application of the policy-
20 holder, accept such policyholder into the Secure
21 Choice Insurance Program of the State; or

22 “(B) in the case of a policyholder who is
23 receiving services under the policy at the time
24 of the change in residence, reimburse the quali-

3 “PAYMENTS TO QUALIFIED PROVIDERS; BENEFIT
4 SUBSIDIES

5 “SEC. 2138. (a) PAYMENTS TO QUALIFIED
6 PROVIDERS.—

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), a qualified insurer shall pay a qualified
9 provider for the costs of furnishing services covered
10 under a qualified long-term care insurance policy.

11 “(2) LIMITATIONS.—

“(A) MAXIMUM DAILY BENEFITS.—A qualified insurer shall not be liable for costs of furnishing services described in section 2135(a)(1) under a qualified long-term care insurance policy which are in excess of the maximum daily benefits described in section 2135(b)(1).

“(B) MAXIMUM LIFETIME BENEFIT.—A qualified insurer shall not be liable for costs of furnishing services described in section 2135(a)(1) under a qualified long-term care insurance policy which are in excess of the maximum lifetime benefit described in section 2135(b)(2).

1 “(b) REIMBURSEMENT BY STATE TO QUALIFIED IN-
2 SURER.—

3 “(1) IN GENERAL.—Upon receipt of a claim
4 from a qualified insurer in connection with payments
5 described in subsection (a)(1), a State shall pay to
6 the qualified insurer the benefit subsidy amount de-
7 termined in accordance with paragraph (2). A State
8 shall make payment under a claim submitted by a
9 qualified insurer under this paragraph not later than
10 30 days after the State receives such claim.

11 “(2) BENEFIT SUBSIDY AMOUNT.—For pur-
12 poses of paragraph (1), the benefit subsidy amount
13 for a payment under subsection (a)(1) is an amount
14 equal to the amount of such payment less the
15 amount for which the qualified insurer is liable as
16 determined under paragraph (3) and the amount for
17 which the policyholder is liable as determined under
18 paragraph (4).

19 “(3) LIABILITY OF QUALIFIED INSURER.—

20 “(A) IN GENERAL.—A qualified insurer
21 shall be liable for a portion of the amount paid
22 under subsection (a)(1) for any services equal
23 to the sum of—

24 “(i) the additional benefit amount de-
25 termined under subparagraph (B); and

1 “(ii) the premium related amount de-
2 termined under subparagraph (C).

3 “(B) ADDITIONAL BENEFIT AMOUNT.—
4 The additional benefit amount determined
5 under this subparagraph is an amount equal to
6 the portion of the amount paid under sub-
7 section (a)(1) for any services attributable to
8 payments for benefits that are in addition to
9 the benefits required under section 2135(a)(1).

10 “(C) PREMIUM RELATED AMOUNT.—

11 “(i) IN GENERAL.—The premium re-
12 lated amount determined under this sub-
13 paragraph is an amount equal to the prod-
14 uct of the amount paid under subsection
15 (a)(1) for the services and the ratio of the
16 actual premium payment amount deter-
17 mined under clause (ii) to the estimated
18 premium payment amount determined
19 under clause (iii).

20 “(ii) ACTUAL PREMIUM PAYMENT
21 AMOUNT.—The actual premium payment
22 amount determined under this clause is an
23 amount equal to the accumulated value of
24 the actual premiums paid by a policyholder
25 under a qualified long-term care insurance

1 policy with respect to the benefits required
2 under section 2135(a)(1).

3 “(iii) ESTIMATED PREMIUM PAYMENT
4 AMOUNT.—The estimated premium pay-
5 ment amount determined under this clause
6 is an amount equal to the estimated accu-
7 mulated value of the premiums that would
8 have been paid by a policyholder under a
9 qualified long-term care insurance policy
10 with respect to the benefits required under
11 section 2135(a)(1) if no premium reduc-
12 tions occurred with respect to such policy
13 under section 2136(a)(3). The estimated
14 premium payment amount under this
15 clause shall be determined using the same
16 assumptions and methodologies used to de-
17 termine the actual premium payment
18 amount under clause (ii).

19 “(4) LIABILITY OF POLICYHOLDER.—

20 “(A) IN GENERAL.—A policyholder shall be
21 liable for a portion of the amount paid under
22 subsection (a)(1) for any services equal to the
23 excess amount determined under subparagraph
24 (B).

25 “(B) EXCESS AMOUNT.—

1 “(i) IN GENERAL.—The excess
2 amount determined under this subpara-
3 graph for any services is the amount by
4 which—

5 “(I) the amount paid under sub-
6 section (a)(1), less the additional ben-
7 efit amount determined under para-
8 graph (3)(B) and the premium related
9 amount determined under paragraph
10 (3)(C), exceeds

11 “(II) the limitation amount de-
12 termined under clause (ii).

13 “(ii) LIMITATION AMOUNT.—The limi-
14 tation amount determined under this
15 clause for any services is an amount equal
16 to the product of—

17 “(I) the limited cost of services
18 amount determined under clause (iii)
19 for the services; and

20 “(II) the number of days for
21 which the services were provided.

22 “(iii) LIMITED COST OF SERVICES
23 AMOUNT.—The limited cost of services
24 amount determined under this clause is—

1 “(I) in the case of nursing facil-
2 ity services, the amount that is equal
3 to the 80th percentile nursing facility
4 resident per diem rate paid under
5 part A in the State on the date an in-
6 dividual becomes eligible to have pay-
7 ments made on such individual’s be-
8 half under a qualified long-term care
9 insurance policy, or

10 “(II) in the case of home and
11 community based services, the amount
12 that is equal to 60 percent of the
13 amount determined under subclause
14 (I).

15 “FEDERAL CONTRIBUTION

16 “SEC. 2139. The Secretary shall pay to each State
17 for each quarter beginning with the first quarter after the
18 date of the enactment of this part an amount that is equal
19 to the sum of—

20 “(1) an amount equal to the product of the
21 Federal long-term care assistance percentage for the
22 State under part A and the State’s expenditures for
23 benefit subsidies under section 2138(b) for such
24 quarter; and

25 “(2) an amount equal to 75 percent of the
26 amount expended during such quarter as the Sec-

1 retary determines to be necessary for the proper and
2 efficient administration of the State plan.

3 “RESOURCE RULES

4 “SEC. 2140. (a) IN GENERAL.—The minimum re-
5 source requirement under part A that applies to a policy-
6 holder shall be increased by an amount equal to \$5,000
7 for each year during which a qualified long-term care in-
8 surance policy is in effect, up to \$100,000 above such min-
9 imum resource requirement.

10 “(b) ELIGIBILITY UNDER PART A.—A policyholder
11 shall not be eligible for services under part A until the
12 policyholder—

13 “(1) has exhausted the maximum lifetime bene-
14 fit under a qualified long-term care insurance policy
15 purchased under this part; and

16 “(2) meets the eligibility requirements under
17 part A (except that with respect to the minimum re-
18 source requirement, the provisions of subsection (a)
19 shall be substituted for the provisions under part A).

20 “STANDARDS AND PERFORMANCE ORGANIZATIONS

21 “SEC. 2141. (a) REQUIREMENT.—Each State shall
22 establish a Standards and Performance Organization in
23 accordance with this section.

24 “(b) ESTABLISHMENT.—In establishing the Stand-
25 ards and Performance Organization under subsection (a),
26 the chief executive officer of the State shall consult with

1 representatives of appropriate State agencies, as identified
2 by the chief executive officer. The chief executive officer
3 of the State may create a new entity to operate as the
4 Standards and Performance Organization within the State
5 or may designate an existing State entity as such Organi-
6 zation. The chief executive officer shall appoint represent-
7 atives of appropriate State agencies to serve as the board
8 of directors of the Standards and Performance Organiza-
9 tion.

10 “(c) FUNCTIONS.—The Standards and Performance
11 Organization shall—

12 “(1) ensure that the qualified long-term care in-
13 surance policies under this part cover at least the
14 care and services described in section 2135(a)(1);

15 “(2) ensure that qualified insurers comply with
16 the insurance laws and regulations established by
17 the State;

18 “(3) ensure that information concerning the
19 program established under this part is made avail-
20 able to individuals within the State in accordance
21 with section 2142;

22 “(4) ensure the quality and appropriateness of
23 the case management services provided to policy-
24 holders under any qualified long-term care insurance
25 policy;

1 “(5) ensure that qualified providers meet stand-
2 ards established by the State;

3 “(6) develop and submit to the State insurance
4 commission standards applicable to qualified insur-
5 ers regarding rejection rates for underwriting;

6 “(7) on an annual basis, verify the income of
7 the policyholders and determine eligibility for any
8 premium reductions as provided for under section
9 2136(a)(3);

10 “(8) provide written notice to insurers of any
11 changes in the income of policyholders which result
12 in such policyholders being eligible for a premium
13 reduction;

14 “(9) carry out the educational program imple-
15 mented under section 2142 in the State;

16 “(10) establish appropriate appeals procedures
17 for the appeals described in subsection (d); and

18 “(12) carry out such other functions as the Sec-
19 retary or the chief executive officer of the State may
20 require.

21 “(d) APPEALS OF CERTAIN DENIALS.—A policy-
22 holder may appeal to the Standards and Performance Or-
23 ganization any decision of a qualified insurer to deny such
24 policyholder coverage, to refuse to pay a claim or to refuse
25 to provide the policyholder with access to benefits.

1 “EDUCATIONAL PROGRAM

2 “SEC. 2142. (a) IN GENERAL.—The Standards and
3 Performance Organization of the State shall implement a
4 comprehensive public information and education program
5 that shall be targeted to individuals age 45 and above but
6 which shall attempt to educate the general public as a
7 whole concerning the need for long-term care insurance.

8 “(b) REQUIREMENTS.—The public information and
9 education program implemented in a State under sub-
10 section (a) shall include—

11 “(1) the development and distribution of bro-
12 chures and other written materials that describe—

13 “(A) the growing elderly population of the
14 United States and the State, and its anticipated
15 impact on financial resources and available
16 long-term care services;

17 “(B) the current methods of financing
18 long-term care (including Government pro-
19 grams);

20 “(C) the need for long-term care insur-
21 ance;

22 “(D) the eligibility requirements for par-
23 ticipation in the program implemented under
24 this part;

1 “(E) the basic minimum benefit package,
 2 limitations, and qualifications for qualified long-
 3 term care insurance policies; and

4 “(F) the appropriateness of purchasing
 5 qualified long-term care insurance policies;

6 “(2) the convening of educational forums deal-
 7 ing with the program implemented under the State
 8 plan throughout the State;

9 “(3) mass media advertisements;

10 “(4) programs to assist employers in providing
 11 information to their employees concerning the pro-
 12 gram established in the State under this part; and

13 “(5) other public information and education
 14 strategies that are determined appropriate by the
 15 Standards and Performance Organization.”.

16 (b) EFFECTIVE DATE.—The amendment made by
 17 subsection (a) shall become effective on October 1, 1994.

18 **SEC. 102. CONTINUING ELIGIBILITY OF INDIVIDUALS ELIGI-**
 19 **BLE FOR LONG-TERM CARE BENEFITS UNDER**
 20 **TITLE XIX UNDER NEW TITLE XXI.**

21 The Secretary of Health and Human Services shall
 22 provide that individuals eligible for services provided under
 23 title XIX of the Social Security Act which effective upon
 24 the date of enactment of this Act are provided under title
 25 XXI of the Social Security Act shall continue to be eligible

1 to receive such services in the same amount, duration, and
2 scope as such individuals would have been eligible to re-
3 ceive but for the provisions of this Act.

4 **SEC. 103. REPEAL OF LONG-TERM CARE PROVISIONS IN**
5 **TITLE XIX OF THE SOCIAL SECURITY ACT.**

6 (a) IN GENERAL.—Title XIX of the Social Security
7 Act (42 U.S.C. 1901 et seq.) is amended—

8 (1) in section 1902 by repealing subsection
9 (a)(13)(F); and

10 (2) by repealing section 1929.

11 (b) EFFECTIVE DATE.—The amendments made by
12 this section shall become effective on October 1, 1994.

13 **SEC. 104. STUDY OF FORMULA FOR PAYMENT OF LONG-**
14 **TERM CARE SERVICES.**

15 The Comptroller General shall study, and report to
16 Congress on such study no later than 1 year after the date
17 of enactment of this Act, on the appropriateness and ade-
18 quacy of using the Federal medical assistance percentage
19 utilized under title XIX of the Social Security Act for pay-
20 ment of services provided under title XXI of the Social
21 Security Act. Such study shall consider the following fac-
22 tors in determining a payment formula:

23 (1) The average income of the elderly in the
24 State compared to the average income of the elderly
25 in the Nation.

1 (2) The percent of elderly in the State under
2 the income official poverty line (as determined by
3 the Office of Management and Budget and revised
4 annually in accordance with section 673(2) of the
5 Omnibus Budget Reconciliation Act of 1981) com-
6 pared to the percent of elderly under such income
7 line in the Nation.

8 (3) The percentage of elderly in the State with
9 income above the income official poverty line (as de-
10 scribed in paragraph (2)) but below 240 percent of
11 such income line (and various intervals in between)
12 compared to national statistics.

13 (4) The percent of elderly over 75 years of age
14 in the State compared to the percent of elderly over
15 75 in the Nation.

16 (5) Other appropriate issues, including meas-
17 ures of State fiscal capacity.

18 **SEC. 105. LONG-TERM CARE DATA COLLECTION SYSTEM.**

19 (a) IN GENERAL.—The Secretary of Health and
20 Human Services, in collaboration with the National Asso-
21 ciation of Insurance Commissioners, shall establish a data
22 collection system for public and private long-term care
23 services to be utilized—

24 (1) to assess the costs of long-term care serv-
25 ices and predict the future costs of such services;

1 (2) to determine the types of long-term care
2 services provided and predict the future need for
3 such services;

4 (3) to determine how long-term care relates to
5 the medical problems experienced by the elderly; and

6 (4) in other matters determined appropriate by
7 such Secretary.

8 (b) REPORT.—Not later than 2 years after the date
9 of enactment of this Act and annually thereafter, the Sec-
10 retary of Health and Human Services shall prepare and
11 submit to the appropriate committees of Congress a report
12 that shall include—

13 (1) a description of the data collection system
14 described in subsection (a);

15 (2) a description of the types of data collected
16 using such system and an analysis of such data;

17 (3) a description of the sources of the data;

18 (4) a description of the manner in which the
19 data was collected; and

20 (5) any other information determined appro-
21 priate by such Secretary.

1 **SEC. 106. CREATION OF NEW ADMINISTRATIVE UNIT FOR**
2 **LONG-TERM CARE PROGRAM.**

3 The Secretary of Health and Human Services shall
4 establish a new organizational unit to administer the new
5 long-term care assistance program established by this Act.

6 **SEC. 107. SECRETARIAL SUBMISSION OF LEGISLATIVE PRO-**
7 **POSAL FOR TECHNICAL AND CONFORMING**
8 **AMENDMENTS.**

9 The Secretary of Health and Human Services shall,
10 within 90 days of the date of enactment of this Act, sub-
11 mit to the appropriate committees of the Congress, a legis-
12 lative proposal providing for such technical and conform-
13 ing amendments in the law as are required by the provi-
14 sions of this Act.

15 **TITLE II—LONG-TERM CARE TAX**
16 **PROVISIONS**

17 **SEC. 200. AMENDMENT OF 1986 CODE.**

18 Except as otherwise expressly provided, whenever in
19 this title an amendment or repeal is expressed in terms
20 of an amendment to, or repeal of, a section or other provi-
21 sion, the reference shall be considered to be made to a
22 section or other provision of the Internal Revenue Code
23 of 1986.

PART I—GENERAL PROVISIONS

SEC. 201. QUALIFIED LONG-TERM CARE SERVICES TREATED AS MEDICAL CARE.

(a) GENERAL RULE.—Paragraph (1) of section 213(d) (defining medical care) is amended by striking “or” at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following new subparagraph:

“(C) for qualified long-term care services (as defined in subsection (f)), or”.

(b) QUALIFIED LONG-TERM CARE SERVICES DEFINED.—Section 213 (relating to deduction for medical, dental, etc. expenses), as amended by section 13131(d)(3) of the Omnibus Budget Reconciliation Act of 1993, is amended by adding at the end the following new subsection:

“(f) QUALIFIED LONG-TERM CARE SERVICES.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified long-term care services’ means necessary diagnostic, preventive, therapeutic, rehabilitative, and maintenance (including personal care) services—

“(A) which are required by an individual during any period during which such individual is a functionally impaired individual,

1 “(B) which have as their primary purpose
2 the provision of needed assistance with 1 or
3 more activities of daily living which a function-
4 ally impaired individual is certified as being un-
5 able to perform under paragraph (2)(A), and

6 “(C) which are provided pursuant to a con-
7 tinuing plan of care prescribed by a licensed
8 health care practitioner (other than a relative of
9 such individual).

10 “(2) FUNCTIONALLY IMPAIRED INDIVIDUAL.—

11 “(A) IN GENERAL.—The term ‘functionally
12 impaired individual’ means any individual who
13 is certified by a licensed health care practitioner
14 (other than a relative of such individual) as
15 being unable to perform, without substantial as-
16 sistance from another individual (including as-
17 sistance involving verbal reminding, physical
18 cueing, or substantial supervision), at least 3
19 activities of daily living described in paragraph
20 (3).

21 “(B) SPECIAL RULE FOR HOME HEALTH
22 CARE SERVICES.—In the case of services which
23 are provided during any period during which an
24 individual is residing within the individual’s
25 home (whether or not the services are provided

1 within the home), subparagraph (A) shall be
2 applied by substituting ‘2’ for ‘3’. For purposes
3 of this subparagraph, a nursing home or similar
4 facility shall not be treated as a home.

5 “(3) ACTIVITIES OF DAILY LIVING.—

6 “(A) IN GENERAL.—Each of the following
7 is an activity of daily living:

8 “(i) Eating.

9 “(ii) Transferring.

10 “(iii) Toileting.

11 “(iv) Dressing.

12 “(v) Bathing.

13 “(B) REQUIREMENT ON THE SEC-
14 RETARY.—For purposes of this section, the Sec-
15 retary shall utilize the definitions and standards
16 for measuring the ability to perform the activi-
17 ties of daily living described in subparagraph
18 (A) developed by the Secretary of Health and
19 Human Services under section 2115(d)(4)(B) of
20 the Social Security Act.

21 “(4) LICENSED HEALTH CARE PRACTI-
22 TIONER.—The term ‘licensed health care practi-
23 tioner’ means—

24 “(A) a physician or registered professional
25 nurse,

1 “(B) a qualified community care case man-
2 ager (as defined in section 2115(k) of the So-
3 cial Security Act), or

4 “(C) any other individual who meets such
5 requirements as may be prescribed by the Sec-
6 retary after consultation with the Secretary of
7 Health and Human Services.

8 “(5) RELATIVE.—The term ‘relative’ means an
9 individual bearing a relationship to another individ-
10 ual which is described in paragraphs (1) through (8)
11 of section 152(a).”

12 (c) TECHNICAL AMENDMENTS.—

13 (1) Subparagraph (D) of section 213(d)(1) (as
14 redesignated by subsection (a)) is amended to read
15 as follows:

16 “(D) for insurance (including amounts
17 paid as premiums under part B of title XVIII
18 of the Social Security Act, relating to supple-
19 mentary medical insurance for the aged)—

20 “(i) covering medical care referred to
21 in subparagraphs (A) and (B), or

22 “(ii) covering medical care referred to
23 in subparagraph (C), but only if such in-
24 surance is provided under a qualified long-

1 term care insurance contract (as defined in
2 section 7702B(b)).”

3 (2) Paragraph (6) of section 213(d) is amend-
4 ed—

5 (A) by striking “subparagraphs (A) and
6 (B)” in the matter preceding subparagraph (A),
7 and inserting “subparagraphs (A), (B), and
8 (C)”, and

9 (B) by striking “paragraph (1)(C)” in sub-
10 paragraph (A) and inserting “paragraph
11 (1)(D)”.

12 **SEC. 202. TREATMENT OF LONG-TERM CARE INSURANCE**
13 **OR PLANS.**

14 (a) GENERAL RULE.—Chapter 79 (relating to defini-
15 tions) is amended by inserting after section 7702A the fol-
16 lowing new section:

17 **“SEC. 7702B. TREATMENT OF LONG-TERM CARE INSURANCE**
18 **OR PLANS.**

19 “(a) GENERAL RULE.—For purposes of this title—

20 “(1) a qualified long-term care insurance con-
21 tract shall be treated as an accident or health insur-
22 ance contract,

23 “(2) any plan of an employer providing cov-
24 erage of qualified long-term care services shall be

1 treated as an accident or health plan with respect to
2 such services,

3 “(3) amounts received under such a contract or
4 plan with respect to qualified long-term care services
5 shall be treated as amounts received for personal in-
6 juries or sickness, and

7 “(4) payments described in subsection (b)(5)
8 shall be treated as payments made with respect to
9 qualified long-term care services.

10 “(b) QUALIFIED LONG-TERM CARE INSURANCE
11 CONTRACT.—

12 “(1) IN GENERAL.—For purposes of this title,
13 the term ‘qualified long-term care insurance con-
14 tract’ means any insurance contract if—

15 “(A) the only insurance protection pro-
16 vided under such contract is coverage of quali-
17 fied long-term care services,

18 “(B) such contract meets the requirements
19 of paragraphs (2), (3), and (4), and

20 “(C) such contract is issued by a qualified
21 issuer.

22 “(2) PREMIUM REQUIREMENTS.—

23 “(A) IN GENERAL.—The requirements of
24 this paragraph are met with respect to a con-
25 tract if such contract provides that—

1 “(i) premium payments may not be
2 made earlier than the date such payments
3 would have been made if the contract pro-
4 vided for level annual payments over the
5 life of the contract (or, if shorter, 20
6 years), and

7 “(ii) all refunds of premiums, and all
8 policyholder dividends or similar amounts,
9 under such contract are to be applied as a
10 reduction in future premiums or to in-
11 crease future benefits.

12 A contract shall not be treated as failing to
13 meet the requirements of clause (i) solely by
14 reason of a provision providing for a waiver of
15 premiums if the policyholder becomes a func-
16 tionally impaired individual.

17 “(B) REFUNDS UPON DEATH OR COM-
18 plete surrender or cancellation.—Sub-
19 paragraph (A)(ii) shall not apply to any refund
20 on the death of the policyholder, or on any com-
21 plete surrender or cancellation of the contract,
22 if, under the contract, the amount refunded
23 may not exceed the amount of the premiums
24 paid under the contract. For purposes of this
25 title, any refund described in the preceding sen-

1 tence shall be includible in gross income to the
2 extent that any deduction or exclusion was al-
3 lowed with respect to the refund.

4 “(3) BORROWING, PLEDGING, OR ASSIGNING
5 PROHIBITED.—The requirements of this paragraph
6 are met with respect to a contract if such contract
7 provides that no money may be borrowed under such
8 contract and that such contract (or any portion
9 thereof) may not be assigned or pledged as collateral
10 for a loan.

11 “(4) PROHIBITION OF DUPLICATE PAYMENT.—
12 The requirements of this paragraph are met with re-
13 spect to a contract if such contract does not cover
14 expenses incurred to the extent that such expenses
15 are reimbursable under title XVIII of the Social Se-
16 curity Act.

17 “(5) PER DIEM AND OTHER PERIODIC PAY-
18 MENTS PERMITTED.—

19 “(A) IN GENERAL.—For purposes of sub-
20 section (a)(4), and except as provided in sub-
21 paragraph (B), payments are described in this
22 paragraph for any calendar year if, under the
23 contract, such payments are made to (or on be-
24 half of) a functionally impaired individual on a
25 per diem or other periodic basis without regard

1 to the expenses incurred or services rendered
2 during the period to which the payments relate.

3 “(B) EXCEPTION WHERE AGGREGATE PAY-
4 MENTS EXCEED LIMIT.—If the aggregate pay-
5 ments under the contract for any period
6 (whether on a periodic basis or otherwise) ex-
7 ceed the dollar amount in effect for such pe-
8 riod—

9 “(i) subparagraph (A) shall not apply
10 for such period, and

11 “(ii) the requirements of paragraph
12 (1)(A) shall be met only if such payments
13 are made with respect to qualified long-
14 term care services provided during such
15 period.

16 “(C) DOLLAR AMOUNT.—The dollar
17 amount in effect under this paragraph shall be
18 \$150 per day (or the equivalent amount in the
19 case of payments on another periodic basis).

20 “(D) ADJUSTMENTS FOR INCREASED
21 COSTS.—

22 “(i) IN GENERAL.—In the case of any
23 calendar year after 1993, the dollar
24 amount in effect under subparagraph (C)

1 for any period occurring during such cal-
2 endar year shall be equal to the sum of—

3 “(I) the amount in effect under
4 subparagraph (C) for the preceding
5 calendar year (after application of this
6 subparagraph), plus

7 “(II) the applicable percentage of
8 the amount under subclause (I).

9 “(ii) APPLICABLE PERCENTAGE.—For
10 purposes of clause (i), the term ‘applicable
11 percentage’ means, with respect to any cal-
12 endar year, the greater of—

13 “(I) 5 percent, or

14 “(II) the cost-of-living adjust-
15 ment for such calendar year.

16 “(iii) COST-OF-LIVING ADJUST-
17 MENT.—For purposes of clause (ii), the
18 cost-of-living adjustment for any calendar
19 year is the percentage (if any) by which
20 the cost index under clause (iv) for the
21 preceding calendar year exceeds such index
22 for the second preceding calendar year. In
23 the case of any calendar year beginning be-
24 fore 1995, this clause shall be applied by
25 substituting the Consumer Price Index (as

1 defined in section 1(f)(5)) for the cost
2 index under clause (iv).

3 “(iv) COST INDEX.—The Secretary, in
4 consultation with the Secretary of Health
5 and Human Services, shall before January
6 1, 1995, establish a cost index to measure
7 increases in costs of nursing home and
8 similar facilities. The Secretary may from
9 time to time revise such index to the extent
10 necessary to accurately measure increases
11 or decreases in such costs.

12 “(E) AGGREGATION RULE.—For purposes
13 of this paragraph, all contracts issued with re-
14 spect to the same policyholder by the same
15 company shall be treated as 1 contract.

16 “(c) QUALIFIED ISSUER.—For purposes of this sec-
17 tion, the term ‘qualified issuer’ means any person which
18 at the time of the issuance of a long-term care insurance
19 contract—

20 “(1) uses a one year preliminary term method
21 for setting up reserves, and

22 “(2) maintains a capital ratio equal to not less
23 than 25 percent of long-term care insurance pre-
24 mium receivables.

1 “(d) SPECIAL RULES FOR TAX TREATMENT OF POL-
2 ICYHOLDERS.—For purposes of this title, solely with re-
3 spect to the policyholder under any qualified long-term
4 care insurance contract—

5 “(1) AGGREGATE PAYMENTS IN EXCESS OF
6 LIMITS.—If the aggregate payments under all quali-
7 fied long-term care insurance contracts with respect
8 to a policyholder for any period (whether on a peri-
9 odic basis or otherwise) exceed the dollar amount in
10 effect for such period under subsection (b)(5)—

11 “(A) subsection (b)(5) shall not apply for
12 such period, and

13 “(B) such payments shall be treated as
14 made for qualified long-term care services only
15 if made with respect to such services provided
16 during such period.

17 “(2) ASSIGNMENT OR PLEDGE.—Such contract
18 shall not be treated as a qualified long-term care in-
19 surance contract during any period on or after the
20 date on which the contract (or any portion thereof)
21 is assigned or pledged as collateral for a loan.

22 “(e) TREATMENT OF COVERAGE AS PART OF A LIFE
23 INSURANCE CONTRACT.—

24 “(1) IN GENERAL.—Except as provided in regu-
25 lations, in the case of coverage of qualified long-term

1 care services provided as part of a life insurance
2 contract, the requirements of this section shall apply
3 as if the portion of the contract providing such cov-
4 erage was a separate contract.

5 “(2) PORTION DEFINED.—For purposes of
6 paragraph (1), the term ‘portion’ means only the
7 terms and benefits under a life insurance contract
8 (whether provided by a rider to, addendum on, or
9 other provision of, such contract) that are in addi-
10 tion to the terms and benefits under the contract
11 without regard to the coverage of qualified long-term
12 care services.

13 “(f) QUALIFIED LONG-TERM CARE SERVICES.—For
14 purposes of this section—

15 “(1) IN GENERAL.—The term ‘qualified long-
16 term care services’ has the meaning given such term
17 by section 213(f).

18 “(2) RECERTIFICATION.—If an individual has
19 been certified as a functionally impaired individual
20 under section 213(f)(2)(A), services shall not be
21 treated as qualified long-term care services with re-
22 spect to the individual unless such individual is
23 recertified no less frequently than annually as a
24 functionally impaired individual in the same manner
25 as under such section, except that such

1 recertification may be made by any licensed health
 2 care practitioner (as defined in section 213(f)(4)),
 3 other than a relative (as defined by section
 4 213(f)(5)) of such individual.

5 “(g) CONTINUATION COVERAGE EXCISE TAX NOT
 6 TO APPLY.—Section 4980B shall not apply to—

7 “(1) qualified long-term care insurance con-
 8 tracts, or

9 “(2) plans described in subsection (a)(2).

10 “(h) REGULATIONS.—The Secretary shall prescribe
 11 such regulations as may be necessary to carry out the re-
 12 quirements of this section, including regulations to prevent
 13 the avoidance of this section by providing qualified long-
 14 term care services under a life insurance contract.”

15 (b) CLERICAL AMENDMENT.—The table of sections
 16 for chapter 79 is amended by inserting after the item re-
 17 lating to section 7702A the following new item:

“Sec. 7702B. Treatment of long-term care insurance or plans.”

18 **SEC. 203. EFFECTIVE DATES.**

19 (a) SECTION 201.—The amendments made by section
 20 201 shall apply to taxable years beginning after the date
 21 of the enactment of this Act.

22 (b) SECTION 202.—The amendments made by sec-
 23 tion 202 shall apply to contracts issued after the date of
 24 the enactment of this Act.

1 (c) TRANSITION RULE.—If, after the date of the en-
 2 actment of this Act and before January 1, 1996, a con-
 3 tract providing coverage for services which are similar to
 4 qualified long-term care services (as defined in section
 5 213(f) of the Internal Revenue Code of 1986) and issued
 6 on or before January 1, 1994, is exchanged for a qualified
 7 long-term care insurance contract (as defined in section
 8 7702B(b) of such Code), such exchange shall be treated
 9 as an exchange to which section 1035 of such Code ap-
 10 plies.

11 **PART II—CONSUMER PROTECTION PROVISIONS**

12 **SEC. 211. POLICY REQUIREMENTS.**

13 (a) IN GENERAL.—Section 7702B (as added by sec-
 14 tion 202) is amended by redesignating subsection (h) as
 15 subsection (i) and by inserting after subsection (g) the fol-
 16 lowing new subsection:

17 “(h) CONSUMER PROTECTION PROVISIONS.—

18 “(1) IN GENERAL.—The requirements of this
 19 subsection are met with respect to any contract if
 20 any long-term care insurance policy issued under the
 21 contract meets—

22 “(A) the requirements of the model regula-
 23 tion and model Act described in paragraph (2),

24 “(B) the disclosure requirement of para-
 25 graph (3),

1 “(C) the requirements relating to
2 nonforfeitability under paragraph (4), and

3 “(D) the requirements relating to rate sta-
4 bilization under paragraph (5).

5 “(2) REQUIREMENTS OF MODEL REGULATION
6 AND ACT.—

7 “(A) IN GENERAL.—The requirements of
8 this paragraph are met with respect to any pol-
9 icy if such policy meets—

10 “(i) MODEL REGULATION.—The fol-
11 lowing requirements of the model regula-
12 tion:

13 “(I) Section 7A (relating to guar-
14 anteed renewal or noncancellability),
15 and the requirements of section 6B of
16 the model Act relating to such section
17 7A.

18 “(II) Section 7B (relating to pro-
19 hibitions on limitations and exclu-
20 sions).

21 “(III) Section 7C (relating to ex-
22 tension of benefits).

23 “(IV) Section 7D (relating to
24 continuation or conversion of cov-
25 erage).

1 “(V) Section 7E (relating to dis-
2 continuance and replacement of poli-
3 cies).

4 “(VI) Section 8 (relating to unin-
5 tentional lapse).

6 “(VII) Section 9 (relating to dis-
7 closure), other than section 9F there-
8 of.

9 “(VIII) Section 10 (relating to
10 prohibitions against post-claims un-
11 derwriting).

12 “(IX) Section 11 (relating to
13 minimum standards).

14 “(X) Section 12 (relating to re-
15 quirement to offer inflation protec-
16 tion), except that any requirement for
17 a signature on a rejection of inflation
18 protection shall permit the signature
19 to be on an application or on a sepa-
20 rate form.

21 “(XI) Section 23 (relating to pro-
22 hibition against preexisting conditions
23 and probationary periods in replace-
24 ment policies or certificates).

1 “(ii) MODEL ACT.—The following re-
2 quirements of the model Act:

3 “(I) Section 6C (relating to pre-
4 existing conditions).

5 “(II) Section 6D (relating to
6 prior hospitalization).

7 “(B) DEFINITIONS.—For purposes of this
8 paragraph—

9 “(i) MODEL PROVISIONS.—The terms
10 ‘model regulation’ and ‘model Act’ mean
11 the long-term care insurance model regula-
12 tion, and the long-term care insurance
13 model Act, respectively, promulgated by
14 the National Association of Insurance
15 Commissioners (as adopted in January of
16 1993).

17 “(ii) COORDINATION.—Any provision
18 of the model regulation or model Act listed
19 under clause (i) or (ii) shall be treated as
20 including any other provision of such regu-
21 lation or Act necessary to implement the
22 provision.

23 “(3) TAX DISCLOSURE REQUIREMENT.—The re-
24 quirement of this paragraph is met with respect to

1 any policy if such policy meets the requirements of
2 section 4980C(e)(1).

3 “(4) NONFORFEITURE REQUIREMENTS.—

4 “(A) IN GENERAL.—The requirements of
5 this paragraph are met with respect to any level
6 premium long-term care insurance policy, if the
7 issuer of such policy offers to the policyholder,
8 including any group policyholder, a
9 nonforfeiture provision.

10 “(B) REQUIREMENTS OF PROVISION.—The
11 nonforfeiture provision required under subpara-
12 graph (A) shall meet the following require-
13 ments:

14 “(i) The nonforfeiture provision shall
15 be appropriately captioned.

16 “(ii) The nonforfeiture provision shall
17 provide for a benefit available in the event
18 of a default in the payment of any pre-
19 miums and the amount of the benefit may
20 be adjusted subsequent to being initially
21 granted only as necessary to reflect
22 changes in claims, persistency, and interest
23 as reflected in changes in rates for pre-
24 mium paying policies approved by the Sec-
25 retary for the same policy form.

1 “(iii) The nonforfeiture provision shall
2 provide at least one of the following:

3 “(I) Reduced paid-up insurance.

4 “(II) Extended term insurance.

5 “(III) Shortened benefit period.

6 “(IV) Other similar offerings ap-
7 proved by the Secretary.

8 “(5) RATE STABILIZATION.—

9 “(A) IN GENERAL.—The requirements of
10 this paragraph are met with respect to any
11 long-term care insurance policy, including any
12 group master policy, if—

13 “(i) such policy contains the minimum
14 rate guarantees specified in subparagraph
15 (B), and

16 “(ii) the issuer of such policy meets
17 the requirements specified in subparagraph
18 (C).

19 “(B) MINIMUM RATE GUARANTEES.—The
20 minimum rate guarantees specified in this sub-
21 paragraph are as follows:

22 “(i) Rates under the policy shall be
23 guaranteed for a period of at least 3 years
24 from the date of issue of the policy.

1 “(ii) After the expiration of the 3-year
2 period required under clause (i), any rate
3 increase shall be guaranteed for a period of
4 at least 2 years from the effective date of
5 such rate increase.

6 “(iii) In the case of any individual age
7 75 or older who has maintained coverage
8 under a long-term care insurance policy for
9 10 years, rate increases under such policy
10 shall not exceed 10 percent in any 12-
11 month period.

12 “(C) INCREASES IN PREMIUMS.—The re-
13 quirements specified in this subparagraph are
14 as follows:

15 “(i) IN GENERAL.—If an issuer of any
16 long-term care insurance policy, including
17 any group master policy, plans to increase
18 the premium rates for a policy, such issuer
19 shall, at least 90 days before the effective
20 date of the rate increase, offer to each in-
21 dividual policyholder under such policy the
22 option to remain insured under the policy
23 at a reduced level of benefits which main-
24 tains the premium rate at the rate in effect

1 on the day before the effective date of the
2 rate increase.

3 “(ii) INCREASES OF MORE THAN 50
4 PERCENT.—

5 “(I) IN GENERAL.—If an issuer
6 of any long-term care insurance pol-
7 icy, including any group master pol-
8 icy, increases premium rates for a pol-
9 icy by more than 50 percent in any 3-
10 year period—

11 “(aa) in the case of a group
12 master long-term care insurance
13 policy, the issuer shall dis-
14 continue issuing all group master
15 long-term care insurance policies
16 in any State in which the issuer
17 issues such policy for a period of
18 2 years from the effective date of
19 such premium increase; and

20 “(bb) in the case of an indi-
21 vidual long-term care insurance
22 policy, the issuer shall dis-
23 continue issuing all individual
24 long-term care policies in any
25 State in which the issuer issues

1 such policy for a period of 2
2 years from the effective date of
3 such premium increase.

4 “(II) APPLICABILITY.—Subclause
5 (I) shall apply to any issuer of long-
6 term care insurance policies or any
7 other person that purchases or other-
8 wise acquires any long-term care in-
9 surance policies from another issuer
10 or person.

11 “(C) MODIFICATIONS OR WAIVERS OF RE-
12 QUIREMENTS.—The Secretary may modify or
13 waive any of the requirements under this para-
14 graph if—

15 “(i) such requirements will adversely
16 affect an issuer’s solvency;

17 “(ii) such modification or waiver is re-
18 quired for the issuer to meet other State or
19 Federal requirements;

20 “(iii) medical developments, new dis-
21 abling diseases, changes in long-term care
22 delivery, or a new method of financing
23 long-term care will result in changes to
24 mortality and morbidity patterns or as-
25 sumptions;

1 “(iv) judicial interpretation of a pol-
 2 icy’s benefit features results in unintended
 3 claim liabilities; or

4 “(v) in the case of a purchase or other
 5 acquisition of long-term care insurance
 6 policies of an issuer or other person, the
 7 continued sale of other long-term care in-
 8 surance policies by the purchasing issuer
 9 or person is in the best interests of individ-
 10 ual consumers.

11 “(6) LONG-TERM CARE INSURANCE POLICY DE-
 12 FINED.—For purposes of this subsection, the term
 13 ‘long-term care insurance policy’ has the meaning
 14 given such term by section 4980C(f).”.

15 (b) CONFORMING AMENDMENT.—Section
 16 7702B(b)(1)(B) (as added by section 202) is amended by
 17 inserting “and of subsection (h)” after “and (4)”.

18 **SEC. 212. ADDITIONAL REQUIREMENTS FOR ISSUERS OF**
 19 **LONG-TERM CARE INSURANCE POLICIES.**

20 (a) IN GENERAL.—Chapter 43 is amended by adding
 21 at the end the following new section:

22 **“SEC. 4980C. FAILURE TO MEET REQUIREMENTS FOR LONG-**
 23 **TERM CARE INSURANCE POLICIES.**

24 “(a) GENERAL RULE.—There is hereby imposed on
 25 any person failing to meet the requirements of subsection

1 (c), (d), or (e) a tax in the amount determined under sub-
2 section (b).

3 “(b) AMOUNT OF TAX.—

4 “(1) IN GENERAL.—The amount of the tax im-
5 posed by subsection (a) shall be \$100 per policy for
6 each day any requirements of subsection (c), (d), or
7 (e) are not met with respect to each long-term care
8 insurance policy.

9 “(2) WAIVER.—In the case of a failure which is
10 due to reasonable cause and not to willful neglect,
11 the Secretary may waive part or all of the tax im-
12 posed by subsection (a) to the extent that payment
13 of the tax would be excessive relative to the failure
14 involved.

15 “(c) PROHIBITION OF SALE OR ISSUANCE TO BENE-
16 FICIARIES UNDER PART A OF TITLE XXI OF THE SOCIAL
17 SECURITY ACT.—The requirement of this subsection is
18 met if a person does not knowingly sell or issue a long-
19 term care insurance policy to an individual who is eligible
20 for medical assistance under part A of title XXI of the
21 Social Security Act.

22 “(d) ADDITIONAL RESPONSIBILITIES.—The require-
23 ments of this subsection are as follows:

24 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

1 “(A) MODEL REGULATION.—The following
2 requirements of the model regulation must be
3 met:

4 “(i) Section 13 (relating to application
5 forms and replacement coverage).

6 “(ii) Section 14 (relating to reporting
7 requirements), except that the issuer shall
8 also report at least annually the number of
9 claims denied during the reporting period
10 for each class of business (expended as a
11 percentage of claims denied), other than
12 claims denied for failure to meet the wait-
13 ing period or because of any applicable
14 pre-existing condition.

15 “(iii) Section 20 (relating to filing re-
16 quirements for marketing).

17 “(iv) Section 21 (relating to standards
18 for marketing), including inaccurate com-
19 pletion of medical histories, other than sec-
20 tion 21C(1) and 21C(6) thereof, except
21 that—

22 “(I) in addition to such require-
23 ments, no person shall, in selling or
24 offering to sell a long-term care insur-

1 ance policy, misrepresent a material
2 fact; and

3 “(II) no such requirements shall
4 include a requirement to inquire or
5 identify whether a prospective appli-
6 cant or enrollee for long-term care in-
7 surance has accident and sickness in-
8 surance.

9 “(v) Section 22 (relating to appro-
10 priateness of recommended purchase).

11 “(vi) Section 24 (relating to standard
12 format outline of coverage).

13 “(vii) Section 25 (relating to require-
14 ment to deliver shopper’s guide).

15 “(B) MODEL ACT.—The following require-
16 ments of the model Act must be met:

17 “(i) Section 6F (relating to right to
18 return), except that such section shall also
19 apply to denials of applications and any re-
20 fund shall be made within 30 days of the
21 return or denial.

22 “(ii) Section 6G (relating to outline of
23 coverage).

24 “(iii) Section 6H (relating to require-
25 ments for certificates under group plans).

1 “(iv) Section 6I (relating to policy
2 summary).

3 “(v) Section 6J (relating to monthly
4 reports on accelerated death benefits).

5 “(vi) Section 7 (relating to incontest-
6 ability period).

7 “(C) DEFINITIONS.—For purposes of this
8 paragraph, the terms ‘model regulation’ and
9 ‘model Act’ have the meanings given such terms
10 by section 7702B(g)(2)(B).

11 “(2) DELIVERY OF POLICY.—If an application
12 for a long-term care insurance policy (or for a cer-
13 tificate under a group long-term care insurance pol-
14 icy) is approved, the issuer shall deliver to the appli-
15 cant (or policyholder or certificate-holder) the policy
16 (or certificate) of insurance not later than 30 days
17 after the date of the approval.

18 “(3) INFORMATION ON DENIALS OF CLAIMS.—
19 If a claim under a long-term care insurance policy
20 is denied, the issuer shall, within 60 days of the date
21 of a written request by the policyholder or certifi-
22 cate-holder (or representative)—

23 “(A) provide a written explanation of the
24 reasons for the denial, and

1 “(B) make available all information di-
2 rectly relating to such denial.

3 “(e) DISCLOSURE.—The requirements of this sub-
4 section are met if either of the following statements,
5 whichever is applicable, is prominently displayed on the
6 front page of any long-term care insurance policy and in
7 the outline of coverage required under subsection
8 (d)(1)(B)(ii):

9 “(1) A statement that: ‘This policy is intended
10 to be a qualified long-term care insurance contract
11 under section 7702B(b) of the Internal Revenue
12 Code of 1986.’.

13 “(2) A statement that: ‘This policy is not in-
14 tended to be a qualified long-term care insurance
15 contract under section 7702B(b) of the Internal
16 Revenue Code of 1986.’.

17 “(f) LONG-TERM CARE INSURANCE POLICY DE-
18 FINED.—For purposes of this section, the term ‘long-term
19 care insurance policy’ means any product which is adver-
20 tised, marketed, or offered as long-term care insurance.”

21 “(b) CONFORMING AMENDMENT.—The table of sec-
22 tions for chapter 43 is amended by adding at the end the
23 following new item:

 “Sec. 4980C. Failure to meet requirements for long-term care in-
 surance policies.”

1 **SEC. 213. COORDINATION WITH STATE REQUIREMENTS.**

2 Nothing in this title shall be construed as preventing
3 a State from applying standards that provide greater pro-
4 tection of policyholders of long-term care insurance poli-
5 cies (as defined in section 4980C(f) of the Internal Reve-
6 nue Code of 1986).

7 **SEC. 214. UNIFORM LANGUAGE AND DEFINITIONS.**

8 (a) IN GENERAL.—The National Association of In-
9 surance Commissioners shall not later than January 1,
10 1995, promulgate standards for the use of uniform lan-
11 guage and definitions in long-term care insurance policies
12 (as defined in section 4980C(f) of the Internal Revenue
13 Code of 1986).

14 (b) VARIATIONS.—Standards under subsection (a)
15 may permit the use of nonuniform language to the extent
16 required to take into account differences among States in
17 the licensing of nursing facilities and other providers of
18 long-term care.

19 **SEC. 215. EFFECTIVE DATES.**

20 (a) SECTION 211.—The amendments made by section
21 211 shall apply to contracts issued after the date of the
22 enactment of this Act, except that the provisions of section
23 203(c) of this Act shall apply to such contracts.

24 (b) SECTION 212.—The amendments made by sec-
25 tion 212 shall apply to actions taken after December 31,
26 1993.



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